

“THE AIR WAS BLUE WITH PERJURY”: POLICE LIES AND THE CASE FOR ABOLITION

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Police officers lie. About nearly every aspect of their work and at every stage of the criminal legal process—in arrest paperwork, warrant affidavits, courtroom testimony, and disciplinary proceedings. The primary scholarly account of police perjury frames the problem as one that emerged largely after the Supreme Court decided Mapp v. Ohio, which made the Fourth Amendment exclusionary rule applicable in state criminal proceedings. But a gap exists in the literature, one this Note seeks to fill: Scholars have neglected to consider whether, and to what extent, police lied before Mapp. By reaching into the historical record, this Note uncovers a rich tradition of rank perjury dating back to the origins of modern policing.

Building on the insight that police have lied for as long as police have existed, this Note sketches an abolitionist framework for police perjury. A structural understanding better accounts for the fact that police lies legitimate police power and figure prominently in two other features of modern policing—racialization and violence. In offering a new framework to understand the perjury problem, this Note joins the growing chorus of scholars, organizers, and activists calling for defunding and dismantling the police.

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* Copyright © 2021 by Samuel Dunkle. J.D., 2021, New York University School of Law; B.A., 2015, Columbia University. I am grateful to Professor Erin Murphy for her feedback, patience, and support. In many ways, Professor Amna Akbar’s incisive scholarship on abolition inspired this project, and I benefited tremendously from her assessment of my work. I am thankful for countless conversations with Claire Groden and Hilarie Meyers about the topic of this Note, and I am indebted to David Blitzer and the *New York University Law Review* editors who substantially improved my work. As always, thanks to my parents for their support—but particularly to my mom, who reads most of what I write and always asks the right questions.

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INTRODUCTION

John McDonald and his wife sat on the stoop outside their Second Avenue apartment building in midtown Manhattan.¹ It was late on a Sunday evening and the couple had just finished caring for their sick child. Exhausted, they decided to catch some fresh air. As the two talked quietly, they noticed a police officer walking nearby. For seemingly no reason, Officer Montgomery Ditmars of the Nineteenth Precinct decided to make a “pompous show of authority,” threatening the couple and ordering them back inside.² Mr. McDonald refused, telling the officer to leave them alone.³ Ditmars drew his heavy club and furiously beat McDonald until he “begged for mercy.”⁴ He then arrested Mr. and Mrs. McDonald, leaving the couple’s sick child unattended, and charged both with disorderly conduct.⁵ After a night in jail, the McDonalds were arraigned.⁶

There was only one problem: Officer Ditmars’s story about the couple’s alleged disorderly conduct couldn’t hold up in court. That morning, hours after the officer’s brutal assault, Mr. McDonald’s face was a “mass of cuts and bruises,” one of his eyes “so swollen as to be completely closed.”⁷ His clothes were stained with blood.⁸ Ditmars lied about the McDonalds’ “disorderly conduct” anyway, under oath, prompting the judge to dismiss the charges and excoriate the officer in open court.⁹ But the McDonalds were not Officer Ditmars’s only victims. He was productive the day before, arresting five others, also for

¹ MARILYNN S. JOHNSON, *STREET JUSTICE: A HISTORY OF POLICE VIOLENCE IN NEW YORK CITY* 12 (2003).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *A Brute in Police Uniform*, N.Y. TIMES (June 28, 1881), <https://www.nytimes.com/1881/06/28/archives/a-brute-in-police-uniform.html>.

⁸ *Id.*

⁹ *Id.*

disorderly conduct.¹⁰ The judge dismissed charges against all five, finding Ditmars's testimony not credible.¹¹

Across the country, in Los Angeles, seventeen-year-old Christopher Silvas Sierra and his friends were drinking outside and celebrating the Fourth of July.¹² Christo, as he was known to friends,¹³ started arguing with others over a bottle of liquor.¹⁴ During an argument, one of two men, either Robert Ocana or another known as "Chaparro," pulled out a gun and shot Christo twice.¹⁵ Five Los Angeles Police Department officers, including William Bost, arrived on the scene thirty minutes later and called an ambulance.¹⁶ Christo, moments before dying, declared Chaparro shot him.¹⁷ Ocana, however, who had previously fought with Christo, was arrested and booked on homicide charges.¹⁸

Like Officer Ditmars, Officer Bost had a problem: Little of that story—other than the Fourth of July celebration and Ocana's arrest—was true. In reality, Bost and four other officers arrived at the scene before Christo was shot.¹⁹ They confronted the group of young, Mexican American kids celebrating outside and decided to arrest them for disturbing the peace.²⁰ Bost punched eighteen-year-old Jesse Lacoma²¹ in the nose and ordered him into a police car.²² Christo, trying to leave the scene, began to "stumble away down the street."²³ It was Officer Bost, following Christo, who "needlessly" shot and killed the young man.²⁴ The officers then began spinning their story, starting with the lie that they had arrived on the scene thirty minutes

¹⁰ *Id.*

¹¹ *Id.*

¹² Joe Spillane, *The Forgotten Drug War: Christobal Silvas Sierra (Los Angeles, 1929)*, POINTS (July 16, 2015), <https://pointshistory.com/2015/07/16/the-forgotten-drug-war-christobal-silvas-sierra-los-angeles-1929>.

¹³ *Id.*

¹⁴ *New Killing Story Told: Witness in Trial of Policeman for Slaying Youth Repudiates Early Defense Statement*, L.A. TIMES, Oct. 1, 1929, at A5.

¹⁵ See *Boy Testifies in Killing Case*, L.A. TIMES, Sept. 27, 1929, at A2 (noting that Christo died of two gunshot wounds); *New Killing Story Told*, *supra* note 14 (discussing a witness's earlier identification of Chaparro as the shooter); *Officer Named in Death Quiz*, L.A. TIMES, July 12, 1929, at A2 (discussing Ocana's arrest after being accused of the shooting).

¹⁶ *Officer Named in Death Quiz*, *supra* note 15.

¹⁷ *Bost Defense Strikes Blow*, L.A. TIMES, Oct. 3, 1929, at A18.

¹⁸ *Officer Named in Death Quiz*, *supra* note 15.

¹⁹ *Bost Defense Strikes Blow*, *supra* note 17.

²⁰ *Officer Up For Murder Plea Today*, L.A. TIMES, Aug. 26, 1929, at A3.

²¹ Some sources report the name as Jesse Lalcoma.

²² *Two Describe Slaying of Boy*, L.A. TIMES, Sept. 28, 1929, at A6.

²³ Spillane, *supra* note 12.

²⁴ *Bost Ordered to San Quentin*, L.A. TIMES, Oct. 19, 1929, at A6.

after the shooting.²⁵ After framing Ocana by falsifying arrest paperwork, the officers coerced Christo's friends into blaming the shooting on Chaparro.²⁶ At his murder trial, Bost perjured himself by denying that he fired his pistol.²⁷ Bost's colleague similarly lied by fabricating the dying statement Christo never made.²⁸ Three other officers took the stand and said they heard "firecrackers" but no gunshots.²⁹ Only one was convicted for perjury.³⁰ After Bost was found guilty of manslaughter and served less than two years, the governor commuted his sentence.³¹

This Note is about police lies, like those told by Officer Ditmars and Officer Bost, along with the countless others police tell. In the last thirty years alone, scandals in America's biggest police departments—from Boston³² to New York³³ to Los Angeles³⁴ to Chicago³⁵ to Atlanta³⁶—unearthed widespread dishonesty and deceit, including cases in which officers lied when filing arrest papers, submitting warrant applications, and testifying in court. The scope of the problem, known as "testilying,"³⁷ "reportilying,"³⁸ or simply perjury, is not con-

²⁵ *Officer Named in Death Quiz*, *supra* note 15.

²⁶ *New Killing Story Told*, *supra* note 14.

²⁷ *Bost Denies Blame for Boy's Death: Policeman Takes Witness Stand in Own Defense During Murder Trial*, L.A. TIMES, Oct. 5, 1929, at A16.

²⁸ See *Bost Defense Strikes Blow*, *supra* note 17 (noting that one of the principal witnesses for Bost's defense—a police officer named Edward Romero—testified that he heard Christo "make a dying statement to the effect that a man named Chaparro shot him").

²⁹ *Id.*

³⁰ *Pardon Sought for Ex-Officer, Pahrman Convicted Here on Perjury in Bost Case*, L.A. TIMES, Apr. 15, 1932, at 4.

³¹ *Id.*

³² See, e.g., Milton J. Valencia, Andrew Ryan & Evan Allen, *When Boston Police Officers Fail to Tell the Truth, the Department Rarely Calls a Lie a Lie*, BOST. GLOBE (Jan. 2, 2021, 4:46 PM), <https://www.bostonglobe.com/2021/01/02/metro/when-boston-police-officers-fail-tell-truth-department-rarely-calls-all-lie-lie>.

³³ See, e.g., REPORT OF THE NEW YORK CITY COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT (1994), reprinted in 6 NEW YORK CITY POLICE CORRUPTION INVESTIGATION COMMISSIONS, 1894–1994, at 36 (Gabriel J. Chin ed., 1997) [hereinafter MOLLEN COMMISSION]; Troy Closson, *A Detective Was Accused of Lying. Now 90 Convictions May Be Erased.*, N.Y. TIMES (Apr. 6, 2021), <https://www.nytimes.com/2021/04/06/nyregion/brooklyn-criminal-convictions.html>.

³⁴ See, e.g., Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. UNIV. L. REV. 1133, 1137–39 (2013).

³⁵ See, e.g., Matthew Hendrickson, *9 More Cases Tied to Former CPD Sgt. Ronald Watts Tossed by Cook County Prosecutors*, CHI. SUN TIMES (Feb. 19, 2021), <https://chicago.suntimes.com/2021/2/19/22291401/9-more-cases-tied-former-cpd-sgt-ronald-watts-tossed-cook-county-prosecutors>.

³⁶ See, e.g., Steve Visser, *Witness Ties Infamous Raid to Lie*, ATLANTA J.-CONST., May 9, 2008, at E1.

³⁷ MOLLEN COMMISSION, *supra* note 33.

fined to large police departments in big cities. Officers in towns like Kenosha, Wisconsin have planted evidence, falsified reports, and lied in court.³⁹ Tulia, Texas recently was rocked by revelations of one officer's repeated perjury that sent more than thirty people to prison with draconian drug sentences.⁴⁰ In St. Charles Parish, Louisiana, more than seventy narcotics cases were dismissed after news broke that a single officer lied under oath in a criminal investigation.⁴¹ By the time the officer's routine perjury was uncovered, at least twenty other people already had pleaded guilty in cases involving that officer; none of those cases were overturned.⁴²

There is a rich body of scholarship documenting the persistence of police perjury and offering solutions to the problem.⁴³ But a gap exists in the literature, one this Note seeks to fill: None of the work to date focuses on the lies told by Officer Ditmars and Officer Bost. John McDonald was beaten and wrongly arrested in 1881. Christo Sierra was murdered in 1929. Yet perjury scholars contend that testilying emerged largely in response to the Supreme Court's 1961 decision in *Mapp v. Ohio*, which held for the first time that the exclusionary rule—a remedy for Fourth Amendment violations that bars the use of unconstitutionally obtained evidence against a suspect—applied to state level prosecutions.⁴⁴ Lying, or so their theories go, allowed officers to avoid judicial scrutiny for otherwise unconstitutional conduct and ensure that “criminals” were convicted notwithstanding “procedural” hurdles.⁴⁵

This Note complicates the *Mapp*-centered account of police perjury. Data suggest police lies increased after *Mapp*, but the conventional framing tells only part of the story. Reaching into the historical record, this Note uncovers a longstanding tradition of rank perjury dating back to the origins of modern policing.⁴⁶

The focus on one type of lying presumably told to evade a specific legal rule encourages an overly legalist response—if only we tinker with Fourth Amendment doctrine or retool institutional incentives to

³⁸ Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1044 (1996).

³⁹ *Former Kenosha Police Officer Who Admitted to Planting Evidence in Murder Case Has Now Been Charged*, FOX 6 NOW MILWAUKEE (May 14, 2015), <https://www.fox6now.com/news/former-kenosha-police-officer-who-admitted-to-planting-evidence-in-murder-case-has-now-been-charged>.

⁴⁰ Covey, *supra* note 34, at 1139–42.

⁴¹ *Id.* at 1142.

⁴² *Id.*

⁴³ *See infra* Section I.B.

⁴⁴ 367 U.S. 643, 660 (1961).

⁴⁵ *See infra* Section I.B.

⁴⁶ *See infra* Part II.

discourage officers from lying, the problem will disappear. Almost two hundred years of testifying suggest that police perjury is less a legal conundrum in need of new rules and instead an enduring feature of policing. By interrupting the *Mapp*-centered narrative, this Note instead situates police perjury within the nascent but growing scholarship on police abolition. In the last several years, after police murdered Rekia Boyd, Michael Brown, Eric Garner, Freddie Gray, Tamir Rice, Tanisha Anderson, Laquan McDonald, Korryn Gaines, Breonna Taylor, George Floyd, Tony McDade, and others, there has been “greater scrutiny [over] how police use violence with legal impunity every day.”⁴⁷ After George Floyd’s death, protests across the U.S. spurred newfound interest in defunding, dismantling, or abolishing the police.⁴⁸

Those new to abolition join a tradition of activists, organizers, and scholars who have developed a structural account of policing that explains police violence in its various forms—from beatings to killings to residential segregation to the imposition of devastating fines and fees, all largely inflicted upon Black, brown, and poor communities.⁴⁹ The crux of abolition is this: U.S. police play a necessary and critical role in “perpetuat[ing] a system of violence and control designed to maintain [the] status quo, to keep poor people of color and poor people in check.”⁵⁰ One central insight of abolitionism is that police violence and law enforcement’s role in constructing a racialized and classed society is not an aberration or something that can be cured. It is fundamental to the project of policing itself.

Until now, police perjury has remained disconnected from the growing academic interest in police abolition. The abolition scholarship focuses on the physical and economic violence that police inflict. Part of that scholarship, and critical to abolition theory, is the historical understanding of policing as an outgrowth of slave patrols in the Antebellum South and control over poor immigrants and people of color in the North.⁵¹ From abolitionist history, contemporary policing

⁴⁷ Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1791 (2020).

⁴⁸ Sam Levin, *Movement to Defund Police Gains “Unprecedented” Support Across US*, GUARDIAN (June 4, 2020, 6:00 AM), <https://www.theguardian.com/us-news/2020/jun/04/defund-the-police-us-george-floyd-budgets>; Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, NEW YORKER (May 7, 2021), <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition>.

⁴⁹ See *infra* Section I.A.

⁵⁰ Akbar, *supra* note 47, at 1816 (internal quotations and citations omitted).

⁵¹ See *infra* Section I.A.1.

is understood as a persistent form of structural violence.⁵² And yet, perjury and abolition scholars have paid scant attention to whether perjury shares the same historical roots as police violence and racialization.

Using historical evidence of testifying to reframe the problem as a structural one, this Note aligns our understanding of police perjury with abolitionist accounts of policing.⁵³ When officers fabricate evidence, manufacture justifications for arrests and searches, and testify falsely to cover up violence and abuses of power, they demonstrate that perjury, like violence, is a feature of policing, not a bug. Part I sets the stage for the historical discussion by first providing an overview of the abolitionist account of policing and then discussing the perjury literature. Part II offers the first account of testifying focused primarily on marshalling historical evidence of perjury predating *Mapp*. Part III analyzes what the historical evidence of perjury means for our understanding of why police lie, what purpose perjury serves in policing, and how we might evaluate possible reforms.

I

ABOLITION AND POLICE PERJURY

The structural account of policing outlined below generates skepticism of the role *Mapp* plays in the story of police perjury. Abolitionist scholars and organizers trace police violence and the racist, gendered, and classist enforcement of the criminal law to the origins of policing itself.⁵⁴ Just like violence is a feature of policing, perhaps perjury, too, is endemic to the police function—not a phenomenon that largely emerged following application of the exclusionary rule to state criminal proceedings. This Part details the abolitionist critique of policing and then surveys the perjury literature to illustrate why tension exists between the two. In doing so, the discussion reveals a need for the historical understanding of police perjury, a void Part II seeks to fill.

A. *Police Abolition*

The structural abolitionist critique of policing is oriented around the historical and contemporary connection between policing and violence, racism, and political and economic expropriation. Activists'

⁵² See Akbar, *supra* note 47, at 1798–99, 1819 (citing ANDREA J. RITCHIE, INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR 40–42 (2017)).

⁵³ See *infra* Part III.

⁵⁴ See *infra* note 71 and accompanying text.

calls to dismantle the police are guided by this structural theory of policing.⁵⁵

Police abolition often accompanies demands to eliminate the broader prison industrial complex (PIC)—or, as the abolitionist organization Critical Resistance describes, “the intersecting interests of government and industry that employ surveillance, policing, the judiciary, and imprisonment as solutions to what the state identifies as social problems (i.e., poverty, homelessness, ‘social deviance,’ political dissent).”⁵⁶ In this view, policing is “a fundamental building block”⁵⁷ of mass incarceration, the front-end gatekeeper of a carceral system that keeps 2.3 million Americans locked up in prisons and jails,⁵⁸ a higher rate than anywhere else in the world.⁵⁹ Millions more are no longer incarcerated but, due to their criminal record, are denied housing, jobs, licenses, loans, and the opportunity to vote.⁶⁰ Attention from legal scholars to PIC abolition is not new,⁶¹ and joins a long tradition among organizers, activists, and scholars of other disciplines focused on abolition theory and practice.⁶²

At the same time, activists during the last thirty years have begun fighting for police abolition not just because of policing’s “function within the PIC[,]” but as a system that harms and oppresses in its own right.⁶³ There has been renewed attention from scholars to police vio-

⁵⁵ See, e.g., Mariame Kaba, *Opinion, Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

⁵⁶ Rachel Herzog & Isaac Ontiveros, *Building an International Movement to Abolish the Prison Industrial Complex*, CRIM. JUST. MATTERS, June 2011, at 42, 42. PIC abolition has its roots in the movements to abolish slavery. See Dorothy E. Roberts, *The Supreme Court 2018 Term—Forward: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 7 (2019).

⁵⁷ Akbar, *supra* note 47, at 1815–16.

⁵⁸ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL’Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

⁵⁹ Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POL’Y INITIATIVE (June 2018), <https://www.prisonpolicy.org/global/2018.html>.

⁶⁰ E.g., *Collateral Consequences*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/collateral.html> (last visited July 31, 2021); *More on Incarceration’s Impact on Kids and Families*, VERA INST. JUST.: THE HUM. TOLL OF JAIL, <http://humantollofjail.vera.org/the-family-jail-cycle> (last visited July 31, 2020) (outlining impact on families of people who are or have been incarcerated). For an example of the daunting and often insurmountable obstacles formerly incarcerated people face when applying for loans, see Kira Lerner, *‘Banks Won’t Even Talk to Us’: Business Owners with a Criminal Record Face an Abundance of Collateral Consequences*, ARNOLD VENTURES (July 30, 2021), <https://www.arnoldventures.org/stories/banks-wont-even-talk-to-us-business-owners-with-a-criminal-record-face-an-abundance-of-collateral-consequences>.

⁶¹ See, e.g., Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261 (2007).

⁶² See Akbar, *supra* note 47, at 1784 n.6 (collecting sources).

⁶³ *Black Liberation and the Abolition of the Prison Industrial Complex: An Interview with Rachel Herzog*, 1 PROPTER NOS, no. 1, Fall 2016, at 64; see also Roberts, *supra* note

lence and criminalization after police shot and killed eighteen-year-old Michael Brown in Ferguson, Missouri in 2014 and choked and killed twenty-five-year-old Freddie Gray in Baltimore, Maryland in 2015.⁶⁴ Earlier scholarship is critical of policing,⁶⁵ but the abolitionist critique of policing paired with explicit calls to dismantle the institution marks a new moment.⁶⁶

Professor Amna Akbar, a leading abolition scholar, outlines the abolitionist account of policing. At bottom, the critique illustrates how, “[r]ather than addressing directly the underlying social, economic, and political problems of inequality and maldistribution—unemployment, substandard wages, inadequate health care, evictions, addiction, mental health, and intimate violence—we police and cage the people who struggle through them.”⁶⁷ Policing and punishment often are carried out by violent force,⁶⁸ but the choice to police as a response to underlying social problems is a form of racialized, classed, and gendered violence as well.⁶⁹ This Section utilizes Professor Akbar’s categorization of the historical, material, and ideological dimensions of the abolitionist critique.

1. *Historical*

To understand policing as a form of racialized violence and a tool of control, abolitionists point to policing’s historical “arc,” which dates to “enslavement, Jim Crow, and settler colonialism.”⁷⁰ Scholars outside the abolition tradition locate the roots of modern policing in mid-nineteenth-century police departments in cities like Boston, New York, and Chicago.⁷¹ As this Subsection illuminates, focusing atten-

56, at 6. For example, activists’ recent demands to defund the police, which originated in Minneapolis after George Floyd’s death, are not new. As Mariame Kaba notes, Black radical organizations for years had advocated for a divest/invest framework—reducing money spent on policing and reinvesting in community groups—meaning new calls to defund the police joined a “continuity of . . . ideas.” Taylor, *supra* note 48.

⁶⁴ See Akbar, *supra* note 47, at 1785 & n.8 (collecting scholarship).

⁶⁵ See *id.* at 1788 & n.18 (collecting scholarship).

⁶⁶ For the first article in a legal journal directly calling for police abolition, see V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 *CARDOZO L. REV.* 1453, 1454 (2019). For scholarship that followed, see Akbar, *supra* note 47, at 1838, and Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 67 *UCLA L. REV.* 1108 (2020).

⁶⁷ Akbar, *supra* note 47, at 1816.

⁶⁸ See Akbar, *supra* note 47, at 1785 & n.8.

⁶⁹ CRITICAL RESISTANCE, *THE CR ABOLITION ORGANIZING TOOLKIT 14* (2004), <https://criticalresistance.org/wp-content/uploads/2012/06/CR-Abolitionist-Toolkit-online.pdf>.

⁷⁰ Akbar, *supra* note 47, at 1812 & n.137; see also Roberts, *supra* note 56, at 20–29.

⁷¹ See Akbar, *supra* note 47, at 1812; Connie Hassett-Walker, *The Racist Roots of American Policing: From Slave Patrols to Traffic Stops*, *CONVERSATION* (June 2, 2020),

tion away from the South is ahistorical and neglects the fact that even in the North, policing “evolved in response to . . . race and class contradictions” animated first by anti-immigrant and then anti-Black sentiment.⁷²

Slave patrols in the Southern colonies were the first publicly funded police forces.⁷³ White people were empowered by law to police enslaved people who ran away, committed criminal acts, or conspired against their owners, and they “patrolled” through unspeakable violence and terror.⁷⁴ Patrolling was an economic enterprise for patrollers, who often earned salaries or tax breaks for their efforts,⁷⁵ and for slaveowners, whose “private property[—]Black human beings”—could be controlled.⁷⁶ The Southern economy thus was sustained through policing.

Following the Civil War, policing in the South transformed from slave patrols to police departments “in name only.”⁷⁷ Legislatures passed “Black Codes,” criminal laws targeted exclusively at Black people,⁷⁸ the enforcement of which—through policing—reconstituted

<https://theconversation.com/the-racist-roots-of-american-policing-from-slave-patrols-to-traffic-stops-112816>. Professor Akbar notes, however, that even scholars focusing on “contemporary accounts of police” recognize policing’s “uglier past.” Akbar, *supra* note 47, at 1812 & nn.134–37 (citing BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION 317–18 (2017)); see also Nirej Sekhon, *Police and the Limit of Law*, 119 COLUM. L. REV. 1711, 1730–33, 1732 n.159 (2019) (noting slave patrols as the “precursor to policing” but nonetheless locating the historical origins of municipal policing in London and then U.S. departments in the Northeast).

⁷² INST. FOR THE STUDY OF LAB. & ECON. CRISIS, *THE IRON FIST AND THE VELVET GLOVE: AN ANALYSIS OF THE U.S. POLICE* 21 (3d ed. 1982).

⁷³ SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* 69, 103 (2001).

⁷⁴ See Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. in Support of Petitioner at 12–14, *Torres v. Madrid*, 141 S. Ct. 989 (2021) (No. 19-292); Philip L. Reichel, *Southern Slave Patrols as a Transitional Police Type*, 7 AM. J. POLICE 51, 55, 59–62 (1988) (describing legislative acts across the South). Patrollers “whipped and terrorized Blacks caught without passes after curfew” and “helped enforce the laws against slave literacy, trade and gambling.” INST. FOR THE STUDY OF LAB. & ECON. CRISIS, *supra* note 72, at 20.

⁷⁵ See HADDEN, *supra* note 73, at 32, 63.

⁷⁶ Alicia Garza, *Foreword to WHO DO YOU SERVE, WHO DO YOU PROTECT?: POLICE VIOLENCE AND RESISTANCE IN THE UNITED STATES*, at vii, vii (Maya Schenwar et al. eds., 2016).

⁷⁷ Brief for NAACP Legal Defense & Educational Fund, Inc., *supra* note 74, at 16; see also INST. FOR THE STUDY OF LAB. & ECON. CRISIS, *supra* note 72, at 21 (“[T]he post-Reconstruction Black laws reestablished the police practices of the slave codes, while nominally changing ‘slave patrols’ to ‘police departments.’”).

⁷⁸ Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1188 (2015).

slavery and the slave economy.⁷⁹ By policing and then criminalizing formerly enslaved people, the plantation class kept their source of labor: Once Black people were incarcerated, the Thirteenth Amendment's prohibition on slavery no longer applied because the Amendment permitted servitude for those "duly convicted."⁸⁰

Violence and terror remained a staple of policing as officers enforced Black Codes and Jim Crow laws. White officers in Memphis in 1866 beat Black people for minor infractions and then raped at least five women and killed forty-six Black people once residents rioted in response.⁸¹ Almost the same occurred months later in New Orleans.⁸² In 1881, an Atlanta police commissioner urged his officers to murder Black residents.⁸³ Police also played a vital role in maintaining the Jim Crow racial order by enforcing formal Jim Crow laws and joining extralegal Ku Klux Klan vigilantes to terrorize, beat, or murder Black people.⁸⁴ Local police were instrumental in lynching efforts, either participating directly or facilitating the mob.⁸⁵ This police terror continued during the Civil Rights Movement.⁸⁶

⁷⁹ Justice Brennan referred to the Black Codes as "poorly disguised substitutes for slavery." *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 672 (1987) (Brennan, J., dissenting in relevant part).

⁸⁰ McLeod, *supra* note 78, at 1188.

⁸¹ EQUAL JUST. INITIATIVE, *LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* 9 (3d ed. 2017).

⁸² Officers beat Black residents and then killed almost fifty after a white mob clashed with Black Orleanians who had gathered to support a state constitutional convention convened to overturn the Black Codes. *Id.*

⁸³ INST. FOR THE STUDY OF LAB. & ECON. CRISIS, *supra* note 72, at 26 ("Kill every damned [Black person] you have a row with.").

⁸⁴ Local sheriffs would frequently attend Klan meetings. Garza, *supra* note 76, at viii. By 1950, the line between police and Klan membership in Florida was "completely blurred." GILBERT KING, *DEVIL IN THE GROVE: THURGOOD MARSHALL, THE GROVELAND BOYS, AND THE DAWN OF A NEW AMERICA* 282 (2012). The same was true of places in the North. *Id.* at 158 (describing "Klan-infested police" in Freeport, New York in the 1930s). Police often played a role in the Klan's extrajudicial violence. As a doctoral student, Jesse Carr compiled an exhaustive but incomplete account of the role of police in lynching. *View by Form of Collusion*, STATE SANCTIONED, <https://statesanctioned.com/view-by-form-of-collusion> (last visited Aug. 8, 2021). Even when officers did not participate in lynchings, they assisted, for example by turning over Black people to the Klan. David Garland, *Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America*, 39 L. & SOC'Y REV. 793, 803 & n.10 (2005).

⁸⁵ See, e.g., EQUAL JUST. INITIATIVE, *supra* note 81, at 47 (noting that a local police captain was among seven white men who were arrested—but never prosecuted—for coordinating an 1891 lynching in Omaha, Nebraska).

⁸⁶ For example, police arrested, blasted with fire hoses, clubbed, and attacked with dogs the more than 700 Black children protesting the bombing of a church in Birmingham, Alabama in 1963. *Id.* at 58. Police in Mississippi delivered three civil rights workers "to a white mob after detaining them for an alleged traffic violation." *Id.* The mob then attacked and killed all three. *Id.*

The abolitionist account of policing centers anti-Black efforts in the South to patrol enslaved people and then police Black people, all to maintain a raced, gendered, and classed hierarchy. But even in the North, in police departments that are central to contemporary nonabolitionist accounts of policing, law enforcement remained a story about state-sponsored racism, othering, and violence. In major cities in the North, the precursors to modern police departments were systems of watchmen, which did little to control crime and instead focused on terrorizing poor immigrants, joining forces with “nativist vigilantes” to “break strikes and suppress hunger riots.”⁸⁷

Once formal departments were established, Northern police engaged in union-busting aimed at largely immigrant communities.⁸⁸ The othering of immigrant communities outside the South in part coincided with the period in which Black people from the South began migrating North,⁸⁹ which prompted the racialization of crime—when “Black” became synonymous with criminal.⁹⁰ Consider Philadelphia, where despite the fact that Black residents composed only seven percent of the population, they accounted for a quarter of all arrests in the 1920s, up from eleven percent more than a decade earlier.⁹¹ Outside the Northeast, Professor Jill Lepore traces modern policing in the American West and Southwest to mobs, vigilantes, and law officers in Arizona, California, Colorado, Nevada, New Mexico, Texas, and Utah who lynched and killed thousands of Mexican Americans and Mexican and Chinese immigrants.⁹²

2. *Material*

Beyond reckoning with policing’s historical trajectory, abolitionists critique policing’s role in constructing an unequal political and economic order. As the historical account shows, policing originated as a mechanism to maintain a racial caste system, but it also was indispensable in constructing a slave economy in the South and an industrial one in the North. Professor Ruth Wilson Gilmore has traced the rapid construction of prisons in California to overlapping surpluses in

⁸⁷ INST. FOR THE STUDY OF LAB. & ECON. CRISIS, *supra* note 72, at 22.

⁸⁸ *Id.* at 26.

⁸⁹ For an account of The Great Migration, including its effects on the racialization of crime and poverty, see generally ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* (2010).

⁹⁰ See generally KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010) (describing both the historical and contemporary racialization of crime).

⁹¹ Jill Lepore, *The Invention of the Police*, *NEW YORKER* (July 13, 2020), <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police>.

⁹² *Id.*

“land, capital, labor, and state capacity[,]” not rising crime rates.⁹³ Prisons were a natural (although not inevitable) outgrowth of the crises of idle space and unused workers, which were caused in part by a changing industrial landscape and increasingly globalized U.S. economy.⁹⁴ Once built, prisons needed to be filled—by police, through the enforcement of the criminal law—with people.⁹⁵ Over time, law enforcement has become a primary point of government contact for poor and working-class people of color through the “criminalization of poverty, mental illness, perceived anti-social behavior, and drug addiction.”⁹⁶ At the same time that federal, state, and local governments invested billions in funding to build and maintain surveillance and carceral apparatuses for policing and caging millions of people, they divested from social institutions that could have kept people employed, educated, healthy, and housed.⁹⁷

Due to chronic overinvestments in policing and underinvestment in communities, Professor Akbar highlights the role of police as a “fundamental tool[] for neoliberal state management.”⁹⁸ Two examples emerged recently in response to the COVID-19 pandemic: First, as part of New York City’s vaccination program, the city deployed officers doubly trained as medics to administer vaccines due to a shortage of healthcare workers.⁹⁹ Police also are first responders to medical emergencies, mental health crises, interpersonal disputes, and evictions.¹⁰⁰ Despite all that police are forced to do and notwithstanding the government’s failure to adequately fund social services, the nonpolice components of police work often are the areas in which

⁹³ RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 28 (2007). Brett Story has extended Gilmore’s analysis beyond California. BRETT STORY, *PRISON LAND: MAPPING CARCERAL POWER ACROSS NEOLIBERAL AMERICA* 18–19 (2019).

⁹⁴ GILMORE, *supra* note 93, at 54–55, 88.

⁹⁵ Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES MAG. (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html>.

⁹⁶ CTR. FOR POPULAR DEMOCRACY & POLICYLINK, *BUILDING MOMENTUM FROM THE GROUND UP: A TOOLKIT FOR PROMOTING JUSTICE IN POLICING* 4–5 (2015), <https://populardemocracy.org/sites/default/files/JusticeInPolicing-webfinal.pdf>.

⁹⁷ KATE HAMAJI ET AL., CTR. FOR POPULAR DEMOCRACY, *LAW FOR BLACK LIVES & BLACK YOUTH PROJECT 100, FREEDOM TO THRIVE: REIMAGINING SAFETY & SECURITY IN OUR COMMUNITIES* 1–5 (2017), <https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf>.

⁹⁸ Akbar, *supra* note 47, at 1821.

⁹⁹ Dean Meminger (@DeanMeminger), TWITTER (Jan. 16, 2021, 9:00 PM), <https://twitter.com/DeanMeminger/status/1350624073823498244> (reporting for the local news on the vaccination rollout).

¹⁰⁰ Akbar, *supra* note 47, at 1816.

officers get the least training.¹⁰¹ The second example came in June 2021, when President Biden announced that \$350 billion of the COVID-19 stimulus package would be earmarked for local police departments to hire more police officers and implement crime prevention programs,¹⁰² rather than fund further investments in education, infrastructure, or unemployment. The distorted funding for police departments, on top of over-criminalization and our dependency on police to provide a social safety net, generates a stratified economic and social order.

3. *Ideological*

The final abolitionist critique focuses on the “ideological framework” that justifies and legitimates policing.¹⁰³ There is a persistent narrative that “criminalization is for the collective good” and “police are agents of public safety,”¹⁰⁴ which is perpetuated in part by pithy slogans like “law and order,” “tough on crime,” and “Blue Lives Matter”—rhetorical devices that construct police as a necessary and effective function.¹⁰⁵ The dominant conception about policing constructs binaries: On one side are good, law-abiding (white and economically well-off) people who can expect government-funded safety and support, and on the other are bad, lawless (Black, brown, and poor) people whose needs are met with punishment.¹⁰⁶ To maintain this myth, opponents of reform resort to fearmongering and mistruths about crime and safety, a strategy rooted in the “historically potent connection between race, fear, and criminality in the U.S.”¹⁰⁷

The implications for this critique are central tenets of abolition theory. When houselessness, poverty, drug addiction, and mental health issues are criminalized rather than seen as problems in need of

¹⁰¹ Barry Friedman, *Disaggregating the Police Function*, 169 U. PA. L. REV. 925, 948 (2021).

¹⁰² Aila Slisco, *Biden, Warning of Crime Wave, Diverts COVID Funds to Police in Snub to Progressives*, NEWSWEEK (June 24, 2021, 12:25 AM), <https://www.newsweek.com/biden-warning-crime-wave-diverts-covid-funds-police-snob-progressives-1603593>.

¹⁰³ This critique resurfaces later in Part III, *infra*, when analyzing the role of perjury in creating public narratives about the value and necessity of police.

¹⁰⁴ Akbar, *supra* note 47, at 1823.

¹⁰⁵ See Olivia B. Waxman, *Trump Declared Himself the ‘President of Law and Order.’ Here’s What People Get Wrong About the Origins of That Idea*, TIME (June 2, 2020, 12:27 PM), <https://time.com/5846321/nixon-trump-law-and-order-history> (interviewing Professor Hinton, who describes the link between “law and order,” the policing of poverty, and race).

¹⁰⁶ See Akbar, *supra* note 47, at 1823–25.

¹⁰⁷ Vincent M. Southerland, *The Racist Fearmongering Campaigns Against Bail Reform, Explained*, APPEAL (June 7, 2021), <https://theappeal.org/the-lab/explainers/the-racist-fearmongering-campaigns-against-bail-reform-explained>.

public health solutions, police—who enforce the criminal law—shift blame for harm from the state to the individual.¹⁰⁸ Rather than question our failure to guarantee basic needs like food, housing, transportation, a living wage, and healthcare, we criminalize the person who steals bread for theft, the houseless person who urinates in public for disorderly conduct, the turnstile jumper who cannot afford public transportation for fare evasion, and the dealer who sells to support his family for drug distribution. In addition to de-emphasizing the state's role in creating and then neglecting these material crises, police construct a reality in which “people of color, poor people, and queer and trans people [are cast] as undeserving and unworthy of social benefits.”¹⁰⁹ Catching these “criminals” and keeping them in cages is then used as evidence to support the myth that policing works and keeps us safe.¹¹⁰

Professor Akbar's and other structural accounts of policing have been framed as an abolitionist understanding of police *violence*, which makes sense given the harm police and prisons inflict.¹¹¹ But scholars also have begun fleshing out what abolitionist principles mean for other aspects of the criminal legal system.¹¹² Similarly, the structural account of policing—including an abolitionist historical perspective—has not been used to evaluate police perjury. Before sketching the longstanding tradition of police perjury, the next Section frames the perjury problem and the existing literature before turning to Part II's historical analysis.

B. Police Perjury

Police officers lie. About what they saw.¹¹³ About whether a “suspect” committed a crime.¹¹⁴ About what a witness or informant told

¹⁰⁸ Cf. Akbar, *supra* note 47, at 1822 (noting that houseless people are criminalized rather than given guaranteed housing).

¹⁰⁹ *Id.* at 1824.

¹¹⁰ See Southerland, *supra* note 107 (discussing the racist fearmongering tactics used to obstruct criminal justice reform efforts).

¹¹¹ Akbar, *supra* note 47, at 1816 (“In abolitionist thinking, policing and incarceration are contingent, rather than necessary, forms of violence . . .”).

¹¹² E.g., Matthew Clair & Amanda Woog, *Courts and the Abolition Movement*, 110 CALIF. L. REV. (forthcoming 2022) (calling for abolition of the criminal court system as it currently exists); Brendan D. Roediger, *Abolish Municipal Courts: A Response to Professor Natapoff*, 134 HARV. L. REV. F. 213 (2021) (same).

¹¹³ E.g., Joseph Goldstein, ‘Testilying’ by Police: A Stubborn Problem, N.Y. TIMES (Mar. 18, 2018), <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html> (“Another officer . . . accused a driver of recklessly crossing the double-yellow line — on a stretch of road that had no double-yellow line.”).

¹¹⁴ E.g., Lionel White, Sr., NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5053> (last updated Dec. 7, 2017) (describing how officers manufactured a story about seeing a suspect with heroin, when

them.¹¹⁵ About whether an informant even exists.¹¹⁶ About how suspicious they felt when observing someone or how dangerous an encounter felt.¹¹⁷ About whether a person consented to a search.¹¹⁸ About the severity of force they inflicted when stopping, frisking, or arresting someone, or whether any force was used at all.¹¹⁹ About whether someone responded to force by “resisting arrest.”¹²⁰ And officers lie at every stage of the criminal legal process—when they fill out paperwork after an incident;¹²¹ when they seek judicial approval for a warrant to search or arrest;¹²² when they testify under oath at suppression hearings¹²³ and trial;¹²⁴ and when they are the focus of disciplinary proceedings.¹²⁵

That police perjury occurs is not debatable. Officers in New York City themselves developed the word “testilying” to capture several phenomena: “testimonial perjury” (lies before a grand jury or a

instead officers burst into White’s apartment without a warrant, beat and arrested him, searched the place but found no drugs, and charged him with aggravated battery and drug possession); *see also* Covey, *supra* note 34, at 1181 (describing police perjury cases in Trulia and Los Angeles in which officers fabricated stories to frame innocent people).

¹¹⁵ *E.g.*, Joseph Goldstein, *Promotions, Not Punishments, for Officers Accused of Lying*, N.Y. TIMES (Mar. 19, 2018), <https://www.nytimes.com/2018/03/19/nyregion/new-york-police-perjury-promotions.html> (reporting on detective accused of including false information in an affidavit for a search warrant because he “said that his confidential informant had purchased cocaine from people on different floors of the house, which the Police Department later determined was not true”).

¹¹⁶ *Commonwealth v. Lewin*, 542 N.E.2d 275, 284 (Mass. 1989) (overturning trial judge’s finding that an informant existed as “clearly erroneous”); *see also* Visser, *supra* note 36 (discussing an officer who untruthfully swore that a reliable, confidential informant existed).

¹¹⁷ The murder of Laquan McDonald by Chicago officer Jason Van Dyke is tragic but instructive. Van Dyke insisted that McDonald was moving toward police while aggressively swinging a knife, when in fact videos “showed the teenager, who was carrying a three-inch folding knife, appearing to try to walk past a group of officers, veering slightly away from them.” Monica Davey, *Officers’ Statements Differ from Video in Death of Laquan McDonald*, N.Y. TIMES (Dec. 5, 2015), <https://www.nytimes.com/2015/12/06/us/officers-statements-differ-from-video-in-death-of-laquan-mcdonald.html?module=inline>.

¹¹⁸ *E.g.*, Covey, *supra* note 34, at 1178–79.

¹¹⁹ *E.g.*, Mark Joseph Stern, *The Police Lie. All the Time. Can Anything Stop Them?*, SLATE (Aug. 4, 2020, 11:51 AM), <https://slate.com/news-and-politics/2020/08/police-testilying.html>.

¹²⁰ *E.g.*, MOLLEN COMMISSION, *supra* note 33, at 37.

¹²¹ *E.g.*, Covey, *supra* note 34, at 1179–80 (highlighting “dropsy” cases in which officers lie to establish probable cause for searches and seizures as one frequent form of “testilying”).

¹²² *E.g.*, Visser, *supra* note 36 (noting officer testimony that Atlanta narcotics officers lied in ninety percent of search warrant applications).

¹²³ *E.g.*, Bob Egelko, *Gun Charges Dropped When Video Contradicts SF Officer’s Testimony*, SFGATE (May 13, 2016, 10:00 AM), <https://www.sfgate.com/crime/article/Gun-charges-dropped-when-video-contradicts-SF-7466109.php>.

¹²⁴ *E.g.*, Covey, *supra* note 34, at 1139–40, 1139 n.32.

¹²⁵ *E.g.*, Davey, *supra* note 117.

judge), “documentary perjury” (lies told under oath in an affidavit or criminal complaint), and “falsification of police records” (lies about facts and circumstances in arrest reports).¹²⁶ Officers in Boston coined the term “creative writing” for when they falsify police reports.¹²⁷ Scholars and commentators have filled pages documenting police perjury’s existence and proposing various solutions.¹²⁸

The primary account of police perjury focuses on the rise of testifying as a backlash to the criminal procedure revolution ushered in by the Warren Court.¹²⁹ In *Mapp v. Ohio*, the Court for the first time required state courts to follow the exclusionary rule, which entitles individuals whose Fourth Amendment rights have been violated to keep unconstitutionally obtained evidence out of their criminal trial.¹³⁰ From 1914 until *Mapp* was decided, only federal judges were constitutionally obligated to exclude illegally obtained evidence from being admitted at trial.¹³¹ Following *Mapp*, the Court in *Miranda v. Arizona* also required exclusion of evidence after officers failed to

¹²⁶ See MOLLEN COMMISSION, *supra* note 33, at 36. Professor Slobogin uses “reporting” for fabrication in reports. Slobogin, *supra* note 38, at 1044. This Note uses “testifying” to capture all three circumstances described in the Mollen Commission report.

¹²⁷ Dick Lehr, Opinion, *A New ‘Bright-Line Rule’ Against Lying*, BOS. GLOBE (July 31, 2009), https://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2009/07/31/a_new_bright_line_rule_against_lying.

¹²⁸ See, e.g., Slobogin, *supra* note 38 (describing the nature of testifying and proposing to curtail it by creating a more flexible probable cause standard, punishing officers for lying, and replacing the exclusionary rule with a damages remedy); Covey, *supra* note 34 (discussing police perjury as a primary cause of wrongful convictions); Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233 (1998) (arguing that officers commit perjury because of the “blue wall of silence,” an unwritten code among police officers that forbids disclosure of misconduct by fellow officers); Vida B. Johnson, *Bias in Blue: Instructing Jurors to Consider the Testimony of Police Officer Witnesses with Caution*, 44 PEPP. L. REV. 245 (2017) (arguing that juries should be given instructions regarding the biases and interests that testifying officers may have); David N. Dorfman, *Proving the Lie: Litigating Police Credibility*, 26 AM. J. CRIM. L. 455 (1998) (arguing that judges should permit robust litigation of police witness credibility, including expanded discovery and cross examination).

¹²⁹ See Slobogin, *supra* note 38, at 1040 (focusing on lying to “evade the consequences of the exclusionary rule”); Johnson, *supra* note 128, at 272–73 (noting that “officer credibility has been an issue for more than fifty years” and tracing the problem to *Mapp*); Covey, *supra* note 34, at 1176 (finding that testifying occurs “when police lie . . . to ensure that evidence obtained during the encounter is not excluded or excludable”); Steven Zeidman, *From Dropsy to Testifying: Prosecutorial Apathy, Ennui, or Complicity?*, 16 OHIO ST. J. CRIM. L. 423, 426 (2019) (noting discussions of perjury in New York stem from “dropsy” cases following *Mapp*); Donald A. Dripps, *Police, Plus Perjury, Equals Polygraphy*, 86 J. CRIM. L. & CRIMINOLOGY 693, 698 (1996) (beginning his discussion of perjury with *Mapp* and subsequent rise of dropsy testimony).

¹³⁰ 367 U.S. 643, 657 (1961).

¹³¹ *Weeks v. United States*, 232 U.S. 383, 398 (1914).

administer prophylactic warnings to suspects before custodial interrogation.¹³²

The exclusionary rule is a focal point for scholars because, in their account, it incentivized police to lie in order to prevent judges from excluding inadmissible evidence against suspects. Former federal prosecutor and New York state judge Irwin Younger first described—and subsequent data confirmed¹³³—the advent of so-called “dropsy” cases that followed *Mapp*.¹³⁴ “Dropsy” cases illustrate why scholars see the exclusionary rule as an underlying cause of police perjury. Pre-*Mapp*, many state police officers could testify honestly about searches and seizures conducted in violation of the Fourth Amendment, without fear that evidence would be suppressed as the result of constitutional misconduct.¹³⁵ But once the exclusionary rule applied, honest testimony required judges to exclude otherwise inculpatory evidence. So officers began recounting a false narrative with stunning frequency: Defendants (fortuitously) “dropped drugs as the police came upon them.”¹³⁶ Any subsequent search or seizure was either outside the Fourth Amendment’s protections or reasonable under the Amendment, and evidence recovered was then admissible at trial.¹³⁷ Rather than comply with the law, officers avoided judicial scrutiny by lying—in arrest reports, as part of sworn affidavits seeking search and arrest warrants, and during testimony before grand juries and judges.

In the perjury literature, the relationship between perjury and *Mapp* is framed as a causal one, but scholars vary in the degree to which they attribute testilying’s historical basis to *Mapp*. No one states explicitly that perjury began only after *Mapp* and did not exist before the decision. But some, like Professor Morgan Cloud and Professor Bennett Capers, imply as much.¹³⁸ Others, including Professor Russell Covey, Professor Chris Slobogin, and Professor

¹³² *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

¹³³ Sarah Barlow, *Patterns of Arrests for Misdemeanor Narcotics Possession: Manhattan Police Practices 1960-62*, 4 CRIM. L. BULL. 549, 555–60 (1968).

¹³⁴ See Irving Younger, *The Perjury Routine*, NATION, May 3, 1967 (defining “dropsy” cases).

¹³⁵ *Id.*

¹³⁶ Slobogin, *supra* note 38, at 1041 n.14 (citing Barlow, *supra* note 133).

¹³⁷ Younger, *supra* note 134.

¹³⁸ Professor Capers notes that “blue lies have existed as long as there have been restraints on police activity[.]” but goes on to suggest that before *Mapp*, officers had little reason to lie and began doing so once the exclusionary rule applied. I. Bennett Capers, *Crime, Legitimacy, and Testilying*, 83 IND. L.J. 835, 868 (2008). Similarly, Professor Cloud points to longstanding evidence of general police corruption, dating back at least to the Wickersham Commission in the 1930s, but traces police perjury itself to the 1960s. See Morgan Cloud, *Judges, “Testilying,” and the Constitution*, 69 S. CAL. L. REV. 1341, 1342–43, 1350–53 (1996); see also Morgan Cloud, *The Dirty Little Secret*, 43 EMORY L.J. 1311, 1314–21 (1994) [hereinafter *Dirty Little Secret*] (“The change in police testimony

Gabriel Chin and Scott Wells distinguish between two types of lies—those to frame or convict the “innocent,” and those to evade the exclusionary rule and convict the “guilty.”¹³⁹ The latter are more prevalent in their view and stem from *Mapp*.¹⁴⁰ Even for Professor Covey, as well as for Professor Chin and Scott Wells, who focus on other “types” of perjury, *Mapp* figures prominently.¹⁴¹

The *Mapp*-centered story of police perjury is intuitively appealing. Two primary explanations exist for why police lie to obscure constitutional violations instead of following the letter of the law. The first is workplace culture. Many officers work in departments that either explicitly or implicitly reward those who make more arrests and do not have evidence from those arrests suppressed later.¹⁴² Lying becomes the path of least resistance to succeeding on the job. In a system that has proven unlikely or unwilling to uncover police mendacity or punish officers who lie, officers face a simple and (in their minds) justifiable choice: lie and increase the odds of a promotion, or, instead, tell the truth and risk allowing constitutional rules requiring suppression of evidence to stand in the way of professional success. Officers lie to advance professionally all while knowing that their departments routinely promote officers notwithstanding evidence that

about investigative practices can be traced to the Supreme Court’s decisions constitutionalizing criminal procedure.”).

¹³⁹ See Slobogin, *supra* note 38, at 1040; Covey, *supra* note 34, at 1176–77 (drawing a distinction and defining the two categories as substantive (targeted at the innocent) and procedural (targeted at the guilty)); Chin & Wells, *supra* note 128, at 246–50 (distinguishing, in part, between “frame-ups” to convict the innocent and perjury at suppression hearings).

¹⁴⁰ Slobogin, *supra* note 38, at 1040 & n.10 (noting that lying to evade the “consequences of the exclusionary rule” is “more prevalent” and citing *Mapp* and *Miranda*); Chin & Wells, *supra* note 128, at 248 & n.46 (noting that “the most common form of police perjury occurs in suppression hearings” to evade the exclusionary rule and citing *Mapp*); Covey, *supra* note 34, at 1176–83 (“[P]olice engage in procedural perjury most frequently to avoid Fourth Amendment suppression concerns . . .”).

¹⁴¹ Professor Covey focuses on both substantive and procedural perjury. See Covey, *supra* note 34, at 1146–66. Professor Chin and Wells identify a “blue wall of silence,” pursuant to which police lie to cover up their colleagues’ lies. Chin & Wells, *supra* note 128, at 237, 250–56.

¹⁴² See, e.g., Stanley Z. Fisher, “Just the Facts, Ma’am”: Lying and the Omission of Exculpatory Evidence in Police Reports, 28 NEW ENG. L. REV. 1, 14 (1993).

they lie,¹⁴³ vouch for known liars to be hired by other departments,¹⁴⁴ and fail to discipline misconduct.¹⁴⁵

The second reason why the exclusionary rule is said to motivate perjury is simpler, but ultimately more nefarious. Many officers view the exclusionary rule as unacceptable and obstructing their primary purpose of keeping communities “safe.”¹⁴⁶ Excluding evidence that officers believe proves a suspect’s criminality is a procedural barrier or “legal impediment” that stands in the way of their “capacity to deal with criminals.”¹⁴⁷ Any rule that obstructs police from catching murderers, rapists, and other criminals is a design flaw—a “procedural formality”—that must be subverted to attain “justice.”¹⁴⁸ Of course, the exclusionary rule necessarily requires foregoing some “truth” to

¹⁴³ E.g., Goldstein, *supra* note 115, at 1 (“One plainclothes officer, Konrad Zakiewicz, was accused by two federal judges of testifying falsely in gun cases in 2013. His career survived. Last year, he was promoted to detective.”).

¹⁴⁴ Take, for example, Jonathan Freitag, who was a member of the Fairfax, Virginia police department from 2015 until 2020. *Fairfax Letter of ‘Good Standing’ for Ex-Officer Freitag*, WASH. POST (Apr. 19, 2021, 11:21 AM), <https://www.washingtonpost.com/context/fairfax-letter-of-good-standing-for-ex-officer-freitag/287aa7e1-61b2-41f5-993c-1aa3efae13ec>. Freitag was involved in more than 930 cases during his tenure, about 400 of which resulted in convictions. Tom Jackman, *Fairfax Seeks to Dismiss 400 Convictions in Cases Brought by One Officer*, WASH. POST (Apr. 16, 2021, 5:18 PM), <https://www.washingtonpost.com/dc-md-va/2021/04/16/convictions-dismiss-jonathan-freitag-fairfax>. Between 2018 and 2019, Freitag was the subject of five internal affairs inquiries, and in July 2019, the Fairfax County Police Department received a tip that Freitag was involved in “multiple acts of misconduct.” *Id.* After the FBI joined the county’s investigation into Freitag’s conduct, the county prosecutor conducted a random review of forty of Freitag’s traffic stops and found “the basis used by the officer to justify the stop, as memorialized in his police report, was untruthful.” *Id.* Rather than fire Freitag, the department agreed to give the officer two weeks’ notice so Freitag could resign. *Id.* Once Freitag resigned, the Fairfax County Police Department provided him with a letter stating that Freitag “resigned . . . in good standing,” had “favorable” employment, and was “eligible for re-hire.” *Id.* Freitag went on to work at the Brevard County Police Department in Florida until April 2021, when he was fired after the department there learned of Freitag’s misconduct in Fairfax. *Id.* To date, one felony conviction based on Freitag’s lies has been vacated, after Fairfax prosecutors found that Freitag’s arrest report was entirely fabricated. Tom Jackman, *D.C. Firefighter Freed from Prison after Conviction Based on Fairfax County Officer’s False Claims Is Thrown Out*, WASH. POST (Apr. 21, 2021, 6:48 PM), <https://www.washingtonpost.com/dc-md-va/2021/04/21/dc-firefighter-case-dismissed>. Prosecutors are seeking to clear the other 400 convictions obtained based on Freitag’s work. *Id.*

¹⁴⁵ E.g., Eric Umansky, *Over 700 Complaints About NYPD Officers Abusing Black Lives Matter Protesters, Then Silence*, PROPUBLICA (Mar. 10, 2021, 5:00 AM), <https://www.propublica.org/article/over-700-complaints-about-nypd-officers-abusing-protesters-then-silence>.

¹⁴⁶ E.g., Slobogin, *supra* note 38, at 1044 (noting that “[t]he most obvious explanation” for police perjury is officers’ “desire to see the guilty brought to ‘justice[.]’ a goal that officers feel is thwarted by a legal system that lets suspects “escape conviction simply because of a ‘technical violation’”).

¹⁴⁷ Jerome H. Skolnick, *Deception by Police*, 1 CRIM. JUST. ETHICS 40, 43 (1982).

¹⁴⁸ Slobogin, *supra* note 38, at 1044.

deter misconduct.¹⁴⁹ But judges, not police, are tasked with striking the proper balance and officers are expected to follow judicial decisions. Officers who lie to evade the exclusionary rule subordinate the rule of law in favor of what the Supreme Court has called the “competitive enterprise of ferreting out crime.”¹⁵⁰

But focusing on *Mapp* distorts our understanding of perjury, its role in the project of policing, and what solutions are worth pursuing. Until now, scholars have neglected to consider any pre-*Mapp* perjury¹⁵¹ or merely nodded to a long tradition of police corruption without considering perjury’s role in that history.¹⁵² Yet abolitionist critiques of policing uncover the deep roots and enduring presence of police violence, prompting the question of whether police lies share similar features. The rest of this Note explores that possibility and its implications.

II

HISTORICAL ACCOUNT OF POLICE PERJURY

This Part develops a historical account of pre-*Mapp* police perjury. Central to the abolitionist critique is the reckoning of modern policing with its roots in slavery, Jim Crow laws, and racial and anti-immigrant violence.¹⁵³ In the perjury literature, however, scant attention is paid to whether—as well as to what extent and to what end—police lied before *Mapp*.¹⁵⁴ And, in the abolition literature, the focus remains primarily on police violence, meaning legal scholars of aboli-

¹⁴⁹ Scholars have engaged in a robust debate about the merits of the exclusionary rule. *E.g.*, Christopher Slobogin, *Why Liberals Should Chuck the Exclusionary Rule*, 1999 U. ILL. L. REV. 363 (1999); *see also id.* at 365 n.2 (collecting scholarship in favor of the rule); *id.* at 367 n.3 (collecting scholarship containing proposed alternatives to the rule). Some justify their opposition to the rule, in part, by pointing to what the system “loses” in terms of “truth” by excluding evidence—not unlike an officer’s potential justification for perjury in the first instance. *See, e.g.*, Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 785–800 (1994) (arguing that courts could better “affirm their integrity and fairness” by not “closing their eyes to truthful evidence”). This debate has unfolded as the Court has dramatically changed the exclusionary rule doctrine by whittling away its protections and creating and expanding exceptions to the rule. *See generally* TRACEY MACLIN, *THE SUPREME COURT AND THE FOURTH AMENDMENT’S EXCLUSIONARY RULE* (2013).

¹⁵⁰ *Johnson v. United States*, 333 U.S. 10, 14 (1948); *see also* Tracey L. Meares, *Synthesizing Narratives of Policing and Making a Case for Policing as a Public Good*, 63 ST. LOUIS U. L.J. 553, 554–58 (2019) (discussing how police effectiveness at fighting crime and police lawfulness are often viewed as in tension with one another).

¹⁵¹ *E.g.*, Melanie D. Wilson, *Improbable Cause: A Case for Judging Police by a More Majestic Standard*, 15 BERKELEY J. CRIM. L. 259, 268 n.30 (2010).

¹⁵² *See supra* note 138 and accompanying text.

¹⁵³ *See supra* Section I.A.1.

¹⁵⁴ *See supra* Section I.B. In one paragraph, Professor Dorfman nods to the idea that testifying predated *Mapp*. However, all of the sources he cites do not substantiate that

tion have yet to focus on perjury as a part of the police function.¹⁵⁵ The following discussion aims to fill these gaps. Much of this evidence, which uncovers instances of perjury dating back to the 1840s, comes from newspaper reports or commissions instituted to investigate police corruption. Relatively few judicial decisions discussing police perjury are available before *Mapp*.¹⁵⁶ The lack of case law, however, belies the rich tradition of police perjury dating back to the beginnings of modern policing.

A. Nineteenth-Century Perjury

Cases involving wanton beating, like Officer Ditmars's treatment of John McDonald—brutality followed by manufactured charges of disorderly conduct and then perjury in court to justify the beating¹⁵⁷—were routine less than three decades after the New York City Police Department (NYPD) was established. Another case from 1874 unfolded in similar fashion. A driver complied with Officer John Russell's request to get inside his car; while entering, the driver made a "good-humored" comment to Russell, which prompted Russell to beat the man "unmercifully" with a whip, leaving him half-blind.¹⁵⁸ Officer Russell then arrested the man for disorderly conduct.¹⁵⁹ In court, the officer provided an "elaborate description" of the man's supposedly unlawful behavior.¹⁶⁰ Justice Wandell discredited Russell's account after a third party testified to what actually occurred, contradicting the officer's lies.¹⁶¹ A third case from 1880 involved an officer fabricating testimony about an assault to justify bludgeoning two young men and arresting them for disorderly conduct—after which three of the officer's colleagues bolstered the lie with their own

point and instead focus on police corruption in New York City and Los Angeles during the 1960s or later. See Dorfman, *supra* note 128, at 482 & nn.151–56.

¹⁵⁵ See *supra* Section I.A.1.

¹⁵⁶ At least one court commented on the pattern of police perjury. Commonwealth v. Claiborne, 102 A.2d 900, 903 (Pa. 1953) (“[O]fficers . . . have been known to commit perjury.” (dictum) (emphasis added)). Otherwise, police perjury is discussed in the rare case that officers were convicted of perjury or related offenses. See, e.g., People v. Kert, 7 N.W.2d 251 (Mich. 1943) (upholding perjury conviction for officer who lied in grand jury proceeding); People v. Lennon, 200 N.Y.S. 510, 511 (App. Div. 1923) (detailing magistrate's decision to dismiss charges after officers falsely accused a man of “holding up” restaurants, “terribly beat[]” the suspect, and lied at arraignments).

¹⁵⁷ See *supra* notes 2–11 and accompanying text.

¹⁵⁸ *Policemen Who Need Correction. A Truckman Assaulted and Beaten—Action of Justice Wandell—An Officer Threatens His Captain*, N.Y. TIMES (Aug. 27, 1874), <https://www.nytimes.com/1874/08/27/archives/policemen-who-need-correction-a-truckman-assaulted-and-beaten.html>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

fabricated (and increasingly fantastical) testimony—before the judge found the entire charade to be false, credited a bystander’s contradictory account, and dismissed the charges.¹⁶²

Some of the earliest documented occurrences of police perjury were in New York City, although testilying emerged in places like Rhode Island¹⁶³ and Atlanta¹⁶⁴ as well. In many cases, perjury was connected with police violence, like that suffered by John McDonald and others, as officers manufactured charges to justify clubbing and beating people on city streets. Hundreds of press accounts of police violence spanned the late nineteenth century, with complaints dating back to 1846, the NYPD’s “first full year of operation.”¹⁶⁵ After they fabricated charges, “officers stuck together and corroborated each other’s testimony” in criminal and disciplinary proceedings.¹⁶⁶ Indeed, decades later, a prosecutor in the Manhattan District Attorney’s office publicly wrote that the NYPD was a “stolid and compact organization for perjury as an offensive and defensive measure.”¹⁶⁷ Around the same time, the police commissioner told a squad at police headquarters that “[y]ou and I know that it is the tradition of this force to hang together and to give testimony in one another’s favor, no matter what the facts are.”¹⁶⁸

¹⁶² See *Hot-Headed Acts by an Officer. Clubbing and Shooting Under Excitement—The Case in Court.*, N.Y. TIMES (Sept. 7, 1880), <https://www.nytimes.com/1880/09/07/archives/hot-headed-acts-by-an-officer-clubbing-and-shooting-under.html>.

¹⁶³ In 1895, a judge ordered the state’s Attorney General to charge two officers with perjury after they arrested a man for carrying a concealed weapon and testified that the man was armed and assaulted one of the officers—when, in fact, one officer placed the billy club inside the arrestee’s pocket “so as to get a case” and then aided the second officer in making the arrest. *Charge of Police Perjury*, BOS. DAILY GLOBE, May 23, 1895, at 7; see also *Providence Police Scandal*, BOS. DAILY GLOBE, Oct. 28, 1895, at 1.

¹⁶⁴ Less than thirty years after the Atlanta Police Department was established, journalists uncovered a practice of employing informants who fabricated testimony against local restaurant owners for illegally selling alcohol. *E.g.*, *Perjury Warrant for Stool Pigeon*, ATLANTA CONST., June 6, 1900, at 10. Other officers were accused of framing an innocent man for robbing someone in Atlanta when the suspect was in a small town more than fifty miles outside the city while the incident occurred. *Will Prosecute Them for Perjury: James Pittard After Witnesses Who Testified Against Him*, ATLANTA CONST., July 8, 1900, at 6.

¹⁶⁵ JOHNSON, *supra* note 1, at 12, 15.

¹⁶⁶ *Id.* at 30, 91.

¹⁶⁷ Howard S. Gans, *In the Matter of the Lawlessness of the Police—A Reply to Mr. Justice Gaynor*, 176 N. AM. REV. 287, 290 (1903).

¹⁶⁸ W. A. Purrington, *The Frequency of Perjury*, 8 COLUM. L. REV. 67, 77 (1908). The former deputy police commissioner for New York City agreed, saying “one must not marvel when he reads in the daily press of policemen committing perjury in the courts.” Clement J. Driscoll, *The New York Police Situation*, 2 NAT’L MUN. REV. 401, 406 (1913). Later cases elsewhere demonstrate officers’ willingness to lie in support of their colleagues. *E.g.*, *Cop to Die for Girl Slaying*, CHI. DEF., Apr. 12, 1930, at 1 (describing one officer charged with perjury for lying under oath to bolster another officer’s defense that he was too drunk to know he shot and killed a fourteen-year-old Black girl after she resisted his

In 1894, the New York State Legislature convened proceedings, eventually known as the Lexow Committee, to investigate widespread corruption in the NYPD.¹⁶⁹ The committee was not tasked with investigating perjury, and scholars who discuss the Lexow Committee as a historical moment in the evolution of modern policing have largely noted the investigation's focus on organized corruption.¹⁷⁰ But testimony from the months-long investigation also yields evidence of perjury among officers, thus confirming journalists' contemporary accounts of police lies.

To start, officers who testified under oath lied to the commission about allegations of bribery and corruption. When one state senator on the committee asked an officer why "policemen come to the stand and swear falsely," an officer responded, "[w]e stand by each other."¹⁷¹ Prosecutors also brought before the committee scores of NYPD officers who had clubbed and beat New Yorkers.¹⁷² Frank Moss, Associate Counsel to the Committee, however, acknowledged to Chairman Clarence Lexow that he "brought only the convicted cases" in which officers were proven to have terrorized people by violence.¹⁷³ In addition, there were "volumes of cases" resulting in acquittals "because of the combined testimony of the police officers."¹⁷⁴ Chairman Lexow responded that "[t]he air was blue with perjury."¹⁷⁵ Moss, along with the city's police commissioner himself, agreed with Lexow's conclusion about the scope of perjury and its use to cover up wrongdoing once officers were accused of brutality.¹⁷⁶

That perjury was a problem among NYPD officers at the department's inception perhaps should be unsurprising. Contemporary accounts of modern policing typically identify London's department, established in 1839, as the model followed in New York and Boston.¹⁷⁷ But London had its own perjury problem. In the late nineteenth century, police there lied in a "systematic way," leading journalists to

attempts to rape her). For a contemporary account of perjury related to this "code of silence," see Chin & Wells, *supra* note 128.

¹⁶⁹ Jay S. Berman, *The Taming of the Tiger: The Lexow Committee Investigation of Tammany Hall and the Police Department of the City of New York*, 3 *POLICE STUD.: INT'L REV. POLICE DEV.* 55, 55 (1981).

¹⁷⁰ *E.g.*, Barry Friedman, *Secret Policing*, 2016 *U. CHI. LEGAL F.* 99, 111 (2016).

¹⁷¹ *False Swearing: Policemen Commit Perjury to Protect Their Superior Officers*, *ATLANTA CONST.*, Dec. 20, 1894, at 1.

¹⁷² *E.g.*, *REPORT AND PROCEEDINGS OF THE SENATE COMMITTEE APPOINTED TO INVESTIGATE THE POLICE DEPARTMENT OF THE CITY OF NEW YORK* 2851 (1895).

¹⁷³ *Id.* at 3439.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *See supra* note 71 and accompanying text.

report that the “reported cases [of perjury] are as one in a score of the occasions in which a protest might with justice be made.”¹⁷⁸ Officers felt compelled to “exaggerate if not . . . invent” as well as “bolster each other’s evidence, regardless of the truth.”¹⁷⁹ One magistrate “estimated that [half] of all summary cases, and [two-thirds] of those arising out of night time incidents, depended entirely on uncorroborated police evidence.”¹⁸⁰ Like disorderly conduct charges contrived by NYPD officers, “drunkenness” was a popular “catch-all provision” in London.¹⁸¹

B. *Twentieth-Century Pre-Mapp Perjury*

While press clippings and the Lexow Commission proceedings provide insight into perjury’s roots dating back to the origins of modern policing, a systemic account of pre-*Mapp* perjury emerges from investigative records compiled by President Hoover’s National Commission on Law Observance and Enforcement (the Wickersham Commission). Established in 1929 as the first national body to study the U.S. criminal justice system, the Commission generated most public attention for its failure to recommend repeal of Prohibition.¹⁸² However, investigators also documented widespread use of “the third degree”—or “the use of physical brutality, or other forms of cruelty, to obtain involuntary confessions”¹⁸³—which culminated in the *Report on Lawlessness in Law Enforcement*.¹⁸⁴ Although that report focused on third-degree tactics and proposed reforms, Commission staff uncovered substantial evidence of police perjury, some connected to brutal interrogation strategies and other, entirely unrelated

¹⁷⁸ Harold Frederic, *London and Its Police: The Blue Kings are Perjurers and They Blackmail Women. Although They Are So Efficient But the People Who Complain Believed Not in the Sort of Reform Which Closed Concert Halls.*, N.Y. TIMES (Nov. 10, 1895), <https://www.nytimes.com/1895/11/10/archives/london-and-its-police-the-blue-kings-are-perjurers-and-they.html>. The rank perjury in London’s Metropolitan Police Department was widely reported in major U.S. cities. *E.g.*, *Charging the Police with Perjury*, BALT. SUN, Oct. 5, 1887, at 1.

¹⁷⁹ Gregory J. Durston, *Criminal and Constable: The Impact of Policing Reform on Crime in Nineteenth Century London* 317 (2001) (Ph.D. dissertation, London School of Economics) (ProQuest) (citation omitted).

¹⁸⁰ *Id.* at 318.

¹⁸¹ *Id.* at 319 (citation and internal quotation marks omitted).

¹⁸² Samuel Walker, *The Engineer as Progressive: The Wickersham Commission in the Arc of Herbert Hoover’s Life and Work*, 96 MARQ. L. REV. 1165, 1165, 1179 (2013).

¹⁸³ Edwin R. Keedy, *The Third Degree and Legal Interrogation of Suspects*, 85 U. PA. L. REV. 761, 763 (1937).

¹⁸⁴ NAT’L COMM’N ON LAW OBSERVANCE & ENF’T, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT (1931); *see also* Keedy, *supra* note 183, at 763.

lies.¹⁸⁵ The following account of police perjury is anchored around the Commission's investigative reports and supplemented with other contemporaneous evidence.¹⁸⁶

1. *Perjury Connected to Confessions and the Third Degree*

According to Ernest Hopkins, special investigator for the Wickersham Commission, perjury and third-degree tactics were intertwined because “police must be ready to support [a] confession in case of serious challenge to its validity.”¹⁸⁷ And so, police officers covering up torture or brutality levied to coerce confessions would recount fanciful, often unrealistic stories to explain how defendants became bruised and bloody: “The defendant fell downstairs while we were bringing him down for questioning.”¹⁸⁸ “The defendant became disor-

¹⁸⁵ Scholars have devoted considerable attention to third-degree techniques and the police's eventual turn from physically coercive tactics to psychologically-oriented ones, a shift that was prompted in part by the Court's decision in *Brown v. Mississippi*. See, e.g., Stephen J. Schulhofer, *Reconsidering Miranda*, 54 U. CHI. L. REV. 435, 437 (1987). Scholars also have focused on how *Miranda*, while forbidding “psychological threats,” still permits “psychological manipulation,” largely neutralizing the effect of the *Miranda* warnings. See, e.g., Eric J. Miller, *Encountering Resistance: Contesting Policing and Procedural Justice*, 2016 U. CHI. LEGAL F. 295, 319–20, 331 (2016). Some scholars reference perjury as part of the third degree. E.g., Charles T. McCormick, *Some Problems and Developments in the Admissibility of Confessions*, 24 TEX. L. REV. 239, 250 (1946) (“[A]n officer who is willing to use methods which he knows are unlawful is frequently . . . willing to deny the wrong under oath. The end justifies the perjury if it justifies the brutality.”). Yet, the incidence of perjury relating to the third degree—not to mention the Commission's uncovering of unrelated perjury—has not been the focus of the police perjury literature.

¹⁸⁶ The Wickersham Commission's final report was published in 1931, two years after the investigation was established. *United States Wickersham Commission Records*, HARV. L. SCH. LIBR.: HOLLIS FOR ARCHIVAL DISCOVERY, https://hollisarchives.lib.harvard.edu/repositories/5/resources/6474/collection_organization#tree::resource_6474 (last visited July 28, 2021). Commission members and field investigators compiled more than 7,000 items, including “correspondence, memoranda, minutes of meetings, transcripts, press releases, notes, financial statements, form letters, briefs and reports, drafts and outlines of reports, news clippings, and printed items.” *Id.* For my research, I accessed the Commission's papers and investigative reports from ProQuest's History Vault. *ProQuest History Vault*, PROQUEST, <https://congressional.proquest.com/historyvault> (search “Wickersham Commission”) (last visited July 28, 2021). To uncover documented instances of police perjury, I began by reading through the Commission's summary reports about law enforcement in major U.S. cities, many of which were written by Ernest Jerome Hopkins, one of the Commission's field investigators. *Says Police Give Boys Third Degree*, N.Y. TIMES, Nov. 13, 1931, at 14. I also read Hopkins's reports following interviews he conducted with judges, journalists, police officers, and others. Further, I read through many of the bibliographies and press clippings compiled by investigators, which offer contemporary reporting on police perjury and misconduct.

¹⁸⁷ ERNEST JEROME HOPKINS, *OUR LAWLESS POLICE: A STUDY OF THE UNLAWFUL ENFORCEMENT OF THE LAW* 284 (1931).

¹⁸⁸ *Id.*

derly in his cell, and his cell-mates beat him up.”¹⁸⁹ “The defendant rolled off a bench in his cell and bruised himself on the concrete floor[]”—even though the bench was “only a few inches high.”¹⁹⁰

The use of perjury to cover up the third degree was not a secret. Wickersham investigators pointed to a book by Ernest Southerland Bates, which included a letter from a former district attorney in New York: The prosecutor admitted “[d]etectives often take the witness stand and commit perjury in order that confessions can be justified. Members of the Police Department do not consider this as unjustified.”¹⁹¹ Across the river in Newark, New Jersey, the Commission’s report suggests widespread perjury by police—and acquiescence by judges—relating to confessions obtained by the third degree. Court-house reporter Robert Thompson told Wickersham investigators that allegations of beatings were frequent.¹⁹²

In Newark, however, courts routinely brushed aside these claims or found that police and detective claims to the contrary “adequately refuted” allegations of the third degree.¹⁹³ Based on an interview with Robert Thompson, the Commission described an “attitude of supp[o]rt” from judges who credited officer testimony that no physical brutality occurred, “even where a man was marked by bruises when he appeared in court.”¹⁹⁴ During another interview about so-called “Jersey Justice,” a local legal scholar noted that police (and judges and prosecutors) “laugh[ed] in their sleeves” whenever defendants alleged abuse or duress.¹⁹⁵ Similar problems emerged elsewhere. Judge Dan Cull from Cleveland, Ohio believed the third degree was constantly used by Cleveland police, and that officials who denied the tactics

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Bibliography Readings, *in* Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Black Americans and Class Prejudice, ProQuest History Vault, Folder 001966-009-0387.

¹⁹² Interview with Robert Thompson (Jan. 5, 1930), *in* Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Ernest Hopkins Interviews on Official Lawlessness, ProQuest History Vault, Folder 001966-011-0467 (noting police “used very severe methods including violence, sleeplessness, lack of food, threats,” and more).

¹⁹³ *Id.*

¹⁹⁴ *Id.* While the Newark report does not outright allege officer perjury, and instead focuses on judicial acquiescence in the third degree, it nonetheless documents *actual* beating and brutality, followed by officer denials of that very fact—at minimum raising the specter of perjury.

¹⁹⁵ Interview with Harold H. Fisher (Jan. 5, 1931), *in* Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Ernest Hopkins Interviews on Official Lawlessness, ProQuest History Vault, Folder 001966-011-0467.

were lying.¹⁹⁶ Judge Cull noted that juries in his courtroom suspected police of lying, leading them to “distrust the police on all possible occasions” and return a “high percentage of acquittals.”¹⁹⁷

While perjury related to the third degree plagued Northern cities like New York, Newark, and Cleveland, the practice was widespread in the South as well. Local law enforcement beat Black men, who often were arrested and charged for crimes they did not commit, in order to elicit confessions—before lying about torture at trial where Black defendants stood little chance of acquittal before all-white juries.¹⁹⁸ Not only would officers lie about the brutality, they also would double down and deny brutality in the few cases when judges credited allegations of the third degree, thus committing perjury on top of perjury.¹⁹⁹

2. *Police Perjury Unrelated to the Third Degree*

A significant amount of perjury documented by the Commission was unrelated to brutal interrogation techniques. Often, perjury was used to cover up routine property destruction and violence. For example, investigators collected news reports from Detroit identifying a police officer who admitted to perjuring himself by “denying that he and two patrolmen wrecked furnishings” in a man’s home when making a prohibition raid.²⁰⁰ The Commission’s report indicates that in Seattle, officers widely constructed false arrest narratives about encounters with suspects to sanitize brutality.²⁰¹ Detectives rarely resorted to using the third degree there—once a suspect is “arrested,

¹⁹⁶ Interview with Judge Dan B. Cull (Nov. 12, 1930), in Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Ernest Hopkins Interviews on Official Lawlessness, ProQuest History Vault, Folder 001966-011-0699.

¹⁹⁷ *Id.*

¹⁹⁸ For a comprehensive account of one example, the Groveland Boys case, see KING, *supra* note 84. While telling the story of four young Black men falsely accused of, and then beaten to confess to, raping a white woman, King recounts similar cases across the Jim Crow South. *E.g., id.* at 53 (describing facts of *Lyons v. Oklahoma*, 322 U.S. 596 (1944), and then-attorney Thurgood Marshall’s work on the case).

¹⁹⁹ *See, e.g., Third Degree Applied by Montgomery Police*, ATLANTA CONST., NOV. 23, 1910, at 3 (describing an officer charged with perjury after he denied, under oath at a motion for a new trial, disclosures of third-degree tactics).

²⁰⁰ *Police Officer May Face Perjury Charges in Raid*, DETENTION FREE PRESS (NOV. 14, 1930), in Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Prohibition Clippings, ProQuest History Vault, Folder 001966-008-0740.

²⁰¹ *See Summary of Seattle* (Dec. 20, 1930), in Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Ernest Hopkins Interviews on Official Lawlessness, ProQuest History Vault, Folder 001966-011-0602 (describing how police claim that suspects resisted arrest and needed to be subdued in order to cover up beatings).

booked and in his cell, he seems fairly safe”²⁰²—but lawlessness instead flourished on the streets. Officers beat suspects in booking rooms or hit them upon arrest or in patrol wagons, manufacturing stories afterward to shroud their behavior in the “color of legality” by claiming “that the man resisted arrest and had to be subdued.”²⁰³ In South Carolina, after a Black man argued with a Greyhound bus driver about using a bathroom during a stop, police dragged the man off the bus, beat him in a nearby alley—leaving him blind for life—and manufactured disorderly conduct charges.²⁰⁴

In Boston, investigators found relatively less reliance on third-degree tactics.²⁰⁵ The Commission documented some judicial complacency toward perjury associated with brutal interrogation tactics.²⁰⁶ But the Boston report uncovers abuse and misconduct in other areas of detective practice: unlawfully entering into people’s homes and assaulting suspects in patrol wagons and at station houses.²⁰⁷ With respect to these abuses, the Commission found “perjury and ‘formula testimony’ exists to a considerable degree.”²⁰⁸ Widespread perjury in Boston—alongside other corruption and abuse—surprised investigators because, unlike in other cities, officers at the time were individually liable for fines and judgments “when convicted or sued for unlawfulness.”²⁰⁹

The Commission also interviewed Harvard Law School Professor John Burns, who specialized in criminal procedure and studied courts in the Boston area.²¹⁰ Professor Burns emphasized that officers had “worked out” before coming to court “just what evidence the given judge would require in order to convict”—and provided that evidence “whether it were strictly true or not.”²¹¹ Officers “corroborate[d] one another from a certain esprit de corps.”²¹² As one example, Burns underscored a troubling practice among Boston police—one worth

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ KING, *supra* note 84, at 121.

²⁰⁵ Summary of Bos. 1 (Jan. 29, 1931), in Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Ernest Hopkins Interviews on Official Lawlessness, ProQuest History Vault, Folder 001966-011-0342.

²⁰⁶ *Id.* at 4.

²⁰⁷ *Id.* at 4–5.

²⁰⁸ *Id.* at 4.

²⁰⁹ *Id.* at 5.

²¹⁰ Interview with John Burns, in Bos. Mass. 1 (Jan. 26, 1931), in Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Ernest Hopkins Interviews on Official Lawlessness, ProQuest History Vault, Folder 001966-011-0342 [hereinafter Interview with John Burns].

²¹¹ *Id.* at 2.

²¹² *Id.*

highlighting given the dropsy narrative following *Mapp*.²¹³ In drunk-driving cases, he observed that in case after case, officers recounted a scripted set of facts in which “defendant’s eyes were glassy, his speech thick, his breath had the odor of liquor, etc.”²¹⁴ Trials then became “formula affairs,” unmoored from truth.²¹⁵

Elsewhere, perjury was targeted along dimensions of gender, race, and class. In New York, NYPD officers falsely arrested and accused poor women of being prostitutes. Vice Squad officers were convicted in 1930 and 1931 after alleging and testifying “by unmitigated perjury” that women were engaged in prostitution.²¹⁶ In all, twenty-seven women were sent to prison with sentences ranging from five days to three years.²¹⁷ The NYPD at the time spent \$100,000 a year just in Manhattan and the Bronx on informants who would entrap women as part of a “‘framing’ operation.”²¹⁸

Investigators found that in Washington, D.C., with traffic accidents between white and Black drivers, “the police often manufacture[d] evidence against Negroes when they were not even present at the accident.”²¹⁹ A Chicago defense attorney recounted how police there fabricated “disorderly conduct” or other “stock charges” against poor Black Chicagoans “for no other reason than because their skins are dark.”²²⁰ The 1929 murder of Christo Sierra, a young Mexican American teenager, by an officer in Los Angeles prompted a cascade of perjury—first arrest paperwork falsified to frame Sierra’s teenage friend for murder, then lies in court.²²¹

²¹³ See *supra* notes 134–37 and accompanying text.

²¹⁴ Interview with John Burns, *supra* note 210, at 2.

²¹⁵ *Id.*

²¹⁶ HOPKINS, *supra* note 187, at 278.

²¹⁷ *Women Say Vice Squad Beat, Robbed Them; Spy Identifies 27 Officers*, N.Y. AM. (Dec. 4, 1930), in Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Entrapment Clippings, ProQuest History Vault, Folder 001966-002-0169.

²¹⁸ *Id.* Frame-ups occurred in other contexts. A New York City police commissioner fired an officer for falsely testifying that he saw a man commit burglary, asking a fellow officer to corroborate this account, and later confessing to perjury. Purrington, *supra* note 168, at 77. Washington, D.C. prosecutors dropped more than twenty cases after it surfaced that undercover agents fabricated liquor purchases they swore they made. *Perjury Kills 20 Prohi Cases*, ATLANTA CONST., July 20, 1927, at 20.

²¹⁹ Material on Discrimination Against Negroes by Police and Appeals to Race Prejudice in Trials, from the Chapter by Ira De A. Reid in Miss Mary van Kleeck’s Report on Work and Law Observance 140, in Wickersham Commission on Law Observance and Enforcement, Committee on Official Lawlessness: Black Americans and Class Prejudice, ProQuest History Vault, Folder 001966-009-0387 [hereinafter Material on Discrimination].

²²⁰ Roy C. Woods *Flays Cops for Making False Arrests*, CHI. DEF., Nov. 28, 1925, at 11.

²²¹ See *supra* notes 15–31 and accompanying text.

Other cases illustrated widespread perjury in the Jim Crow South. Recounting police lawlessness directed at Black people, the Commission reports suggest officers in the South lied about facts to make out more serious offenses when faced with allegations that a Black man assaulted a white woman: “There is a tendency on the part of the police to make every simple assault or attempted simple assault on a white woman by a Negro an assault with intent to rape unless the surrounding circumstances would make such a charge utterly ridiculous.”²²² A related thread of perjury stems from unfounded accusations that Black men raped white women, which led to scores of innocent-but-framed men killed by lynching or state-sanctioned executions.²²³

Together, these Wickersham Commission documents and contemporaneous reporting, along with evidence dating police perjury to the mid-1800s, demand we reconsider the conventional narrative of how and why police perjury emerged. Police lies were a feature of policing well-before the exclusionary rule was incorporated against the states in *Mapp*. Officers lied to justify wanton and needless violence, to evade judicial scrutiny for torturous interrogation tactics, to facilitate arrests by formulaic testimony, and to cover up for corruption. The next Part examines the implications of this historical record and the way forward.

III

POLICE PERJURY AND ABOLITION, REVISITED

What insights does the historical record yield about our understanding of police lies and about the *Mapp*-centered scholarly account? What path should scholars, practitioners, and activists chart in response to longstanding police perjury? The following discussion seeks to answer those questions, first by drawing on the historical record and the continuities between historical and contemporary perjury to develop a structural and abolitionist account of police lies. Then, this Part addresses the consequences of the structural account—both for our understanding of how we can and should confront police perjury and for the broader abolition debate.

²²² Material on Discrimination, *supra* note 219, at 141.

²²³ KING, *supra* note 84, at 50–53, 152; *see also, e.g.*, SAMUEL R. GROSS, MAURICE POSSLEY & KLARA STEPHENS, NATIONAL REGISTRY OF EXONERATIONS, RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES 13 (2017), https://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf (noting case of Stanley Wrice, who was wrongfully convicted of raping a white woman as a result of a confession coerced through torture and was sentenced to life in prison before his eventual exoneration).

A. *Toward a Structural Account of Police Lies*

The historical account above enriches our understanding of police perjury and policing generally. Based on the historical evidence, this Note follows the lead of recent abolitionist literature, which recasts policing in light of abolitionist history and policing's role in constructing a racialized and classed society;²²⁴ in doing so, this Section abandons the *Mapp*-centered, legalist account that predominates the perjury scholarship.²²⁵ Instead, it suggests that a structural, abolitionist critique of perjury better captures the lineage of testifying and the role—both historically and today—that perjury plays in policing.

This critique starts from the simple but undeniable proposition drawn from the historical record: Police have lied for as long as police have existed. In the first full year the NYPD operated, New Yorkers filed scores of brutality complaints against law enforcement, and within years, the local press reported on how perjury was a defining feature in many of those cases.²²⁶ Cities like Boston, Seattle, Newark, and Washington, D.C. were breeding grounds for perjury not long after those departments were established.²²⁷ Police in the Jim Crow South lied to subordinate and control Black people.²²⁸ To the extent that any contemporary account of perjury either explicitly or implicitly denies a pre-*Mapp* tradition of perjury, it is ahistorical.

Perjury by police remained a hallmark characteristic of policing over time, despite progressive reforms born out of the Lexow Committee, Wickersham Commission, and similar investigations—as well as developments in police practices and the broader movement to professionalize police forces.²²⁹ The pre-*Mapp* record of widespread perjury demonstrates a diversity in the types of lies police told and in the utility of those lies for police.²³⁰ This history is powerful evidence that lying is endemic to the policing function—a feature, not a bug. Testifying thus has persisted, impervious to changes in law and culture and practice, much like two more robustly documented features of American policing: racialization and violence.

The historical evidence supports a departure from the contemporary focus on police lies told to avoid suppression of evidence. That

²²⁴ See generally Akbar, *supra* note 47; Roberts, *supra* note 56; Alexandra Natapoff, *Atwater and the Misdemeanor Carceral State*, 133 HARV. L. REV. F. 147 (2020).

²²⁵ See *supra* Section I.B.

²²⁶ See *supra* notes 157–76 and accompanying text.

²²⁷ See *supra* Section II.B.2.

²²⁸ See *supra* notes 222–23 and accompanying text.

²²⁹ See Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 2003–15 (2017) (describing the historical arc of police reform efforts).

²³⁰ See *supra* Part II.

perspective understands police perjury largely as a response to the exclusionary rule growing out of the Court's decision in *Mapp* in 1961.²³¹ Given the deeply rooted tradition of dishonesty, the scholarship misses the forest for the trees. However, departing from the *Mapp*-focused narrative of testilying does not discount police perjury to evade the exclusionary rule. If anything, the historical evidence predating *Mapp* bolsters the notion that police would lie to evade any legal rule. But using the longer arc of perjury to frame testilying as a systemic phenomenon reorients the problem: Lying to avoid *Mapp*'s consequence was not a divergence from a general practice of honesty but instead the outgrowth of what police have always done. Lies told to evade suppression of evidence are part of a larger project of police dishonesty.

Drawing on lessons from the historical record and the ways that record connects to contemporary perjury, I begin briefly sketching what a structural account of the prevalence of police perjury might entail. Two elements of testilying stand out: perjury's connection to police violence and to racialized and classed policing, and perjury's role in constructing broader narratives about policing as a legitimate and necessary function. This framework reveals why truth is incompatible with policing—because policing is synonymous with racialized and classed violence and control, and because lying allows police to whitewash those features and sell a sanitized narrative about “safety” and “crime” to judges, lawyers, and a complacent public.

1. *Perjury's Connection to Violence, Race, and Class*

The historical and contemporary records forcefully underscore the connection between police perjury and police violence. Whether in cases involving the third degree, or others in which police wantonly brutalized people but not to elicit confessions, perjury dating back to the mid-nineteenth century allowed police to downplay or justify force to satisfy legal requirements or avoid public backlash.²³² The role of police lies in violent police encounters persists today, with officers routinely tacking on charges like assault and battery²³³ or resisting arrest²³⁴ to whitewash the use of force. Still, in other instances, often those involving deadly force, perjury comes not in the form of manu-

²³¹ See *supra* Section I.B.

²³² See *supra* Part II.

²³³ See *Lionel White, Sr.*, *supra* note 114.

²³⁴ See Stern, *supra* note 119.

factured criminal charges but the false narrative from police about how threatening a person appeared.²³⁵

But the connection between perjury and violence transcends those cases in which police inflate a suspect's threatening demeanor to justify shooting them or manufacture claims that suspects resisted arrest to shield violence from legal sanction. In 2016, police made more than 10.6 million arrests.²³⁶ Professor Barry Friedman roughly estimates that state and local police conduct more than eight million searches annually "of pedestrians and automobiles alone."²³⁷ In the *Mapp*-focused police perjury framing, scholars view officers' lies as geared toward ensuring that the fruits of those arrests and searches are admissible in court.²³⁸

Testifying, even in suppression hearings, does more than evade application of the exclusionary rule. Officers arrest first and justify later—by claiming a person consented to questioning and being searched, or by manufacturing circumstances that made someone appear suspicious, or by lying to say evidence discovered post-arrest was in plain view.²³⁹ That lie, almost always successful, validates the officer's decision to stop, search, frisk, and arrest in the next case. The millions of stops, searches, frisks, and arrests that police conduct every year, many predicated on lies, are violent and degrading in their own right.²⁴⁰ Thus even in cases that *Mapp*-focused scholars foreground, involving lies so that drugs or guns or other physical evidence won't be suppressed, perjury whitewashes the violence that accompanies routine policing.

The fact that perjury also is deployed along dimensions of race and class is perhaps unsurprising. Insofar as perjury is connected to violence, police inflict violence overwhelmingly on Black, brown, and poor people.²⁴¹ The historical and contemporary evidence of perjury demonstrates the connection. For police clubbings in nineteenth-century New York, which journalists reported and police themselves

²³⁵ The murders by police of Laquan McDonald and George Floyd, for example, were followed by lies surrounding how threatened the cops felt—lies that were dispelled once video footage was made publicly available. See Davey, *supra* note 117.

²³⁶ *Arrest*, VERA INST. JUST., <https://arresttrends.vera.org/arrests> (last visited Aug. 28, 2021).

²³⁷ FRIEDMAN, *supra* note 71, at 7.

²³⁸ See *supra* Section I.B.

²³⁹ See *supra* notes 113–25 and accompanying text. For a discussion of lies related to consent, see Covey, *supra* note 34, at 1178–79.

²⁴⁰ See MARIAME KABA, *WE DO THIS 'TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* 6–12 (2021) (describing the routine violence and indignity that accompany routine interactions with police); see also FRIEDMAN, *supra* note 71, at 7–11 (describing routine force like pepper spray, tasers, and body cavity searches).

²⁴¹ See Akbar, *supra* note 47, at 1797–99.

conceded was accompanied by perjury, brutality was concentrated in poor neighborhoods where “immigrant and nonwhite residents had little power to resist.”²⁴² Perjury associated with the third degree was racialized, too. While officers beat and tortured white suspects to elicit confessions, brutality followed by perjury was a key feature of confessions obtained against Black men in the South, often for fabricated charges of rape or murder involving white women.²⁴³

The same relationship between perjury, violence, and race is clear today.²⁴⁴ Even absent violence, law enforcement officers predominantly target Black, brown, and poor communities as those in need of policing.²⁴⁵ Mathematically then, it seems uncontroversial to conclude that perjury arises more frequently in cases involving Black, brown, and poor people. However, we might suspect that even with these disparities, perjury disproportionately emanates from police interactions with Black, brown, and poor people. Perjury scholars focusing on the role of the exclusionary rule implicitly make this point, although perjury’s connection to race is rarely mentioned, let alone foregrounded, in their work.²⁴⁶ The preoccupation with dropsy cases and so-called “procedural perjury” in suppression hearings underscores the connection between race and police perjury. Even though suppression hearings are relatively rare, they are most frequently held in cases where guns or drugs are the evidence someone is seeking to suppress.²⁴⁷ Drug and gun cases are overwhelmingly infected by racial disparities.²⁴⁸ Combined with the racialization of police violence, this sug-

²⁴² JOHNSON, *supra* note 1, at 6–7.

²⁴³ See generally KING, *supra* note 84; see also, e.g., *id.* at 152 (noting the coerced confessions of young Black men threatened with lynching in a case known as “Little Scottsboro”).

²⁴⁴ Not a single example of contemporary perjury cited in this Note involves a white suspect.

²⁴⁵ See, e.g., FRIEDMAN, *supra* note 71, at 12 (“Of course we’d be lying to ourselves if we do not recognize that policing often falls hardest on racial minorities, on the lower classes.”). An analysis of arrest data in eight hundred jurisdictions revealed that Black people “were arrested at a rate five times higher than white people in 2018.” Pierre Thomas, John Kelly & Tonya Simpson, *ABC News Analysis of Police Arrests Nationwide Reveals Stark Racial Disparity*, ABC NEWS (June 11, 2020, 5:04 AM), <https://abcnews.go.com/US/abc-news-analysis-police-arrests-nationwide-reveals-stark/story?id=71188546>. In 250 of those jurisdictions, Black people were ten times more likely to be arrested. *Id.* The data exclude police departments in Florida, Illinois, and New York City. *Id.*

²⁴⁶ See, e.g., Slobogin, *supra* note 38 (neglecting to mention race); *Dirty Little Secret*, *supra* note 138 (same); Dorfman, *supra* note 128 (same). *But see* Johnson, *supra* note 128; Capers, *supra* note 138.

²⁴⁷ Brief of Amici Curiae the Boston Bar Ass’n et al. in Support of the Defendant-Appellant & Reversal at 31–35, *Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822 (Mass. 2021) (No. SJC-13009), 2020 WL 7047113, at *31–35 (citing various empirical studies).

²⁴⁸ See generally Radley Balko, Opinion, *Shaneen Allen, Race and Gun Control*, WASH. POST (July 22, 2014, 2:51 PM), <https://www.washingtonpost.com/news/the-watch/wp/2014/>

gests police lies overwhelmingly are told when the ultimate victim of the lie is a person of color.

2. *Perjury and Police Narratives*

Perjury often appears inextricably linked to two fundamental and odious features of policing—racialized and classed violence and control. But a structural account of perjury demands we ask what role perjury plays in empowering and legitimizing police. Why is perjury so proximate to whitewashing the violent and discriminatory enforcement of criminal laws? Police lies in arrest reports, court testimony, and disciplinary proceedings exist within a broader information ecosystem—one in which officers, police unions, legislators, activists, organizers, and the public fight over what policing means and what purpose police serve. Properly understood, perjury is one part of that struggle over competing narratives. Perjury is at the core of the “big lie” that “the discretionary despotism of policing necessarily protects and serves the people.”²⁴⁹ This Subsection argues that perjury, as one *necessary* component of a police public relations strategy, legitimizes policing by reinforcing the notion that police keep us safe and creating conditions that justify further police control.

Recall that abolitionists counter the “ideological framework that is central to police power and legitimacy: that criminalization is for the collective good, and police are agents of public safety.”²⁵⁰ Legitimacy theory suggests that in order to police—that is, enforce criminal law by threat and use of violence—officers require some measure of authority or power.²⁵¹ By and large, that legitimacy does not come from poor Black and brown people who are policing’s primary targets.²⁵² Instead, scholars, policymakers, practitioners, and officers justify policing within one of two frames. First is whether police are

07/22/shaneen-allen-race-and-gun-control (guns); MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010) (drugs).

²⁴⁹ Stuart Schrader, *The Lies Cops Tell and the Lies We Tell About Cops*, *NEW REPUBLIC* (May 27, 2021), <https://newrepublic.com/article/162510/cops-lie-public-safety-defund-the-police>.

²⁵⁰ Akbar, *supra* note 47, at 1823.

²⁵¹ Professor Monica Bell describes how legitimacy theorists nevertheless misunderstand the relationship between police and poor, Black communities. Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *YALE L.J.* 2054 (2017); *see also* Russell K. Robinson, *Perceptual Segregation*, 108 *COLUM. L. REV.* 1093 (2008) (showing how victims of discrimination perceive and define discrimination differently than those who are unaffected).

²⁵² Bell, *supra* note 251, at 2085–86 (describing “legal estrangement,” the concept that regardless of perceptions of legitimacy, targeted communities “are nonetheless structurally ostracized”).

“lawful.”²⁵³ Second, and the one advanced primarily by police themselves, is whether officers are “effective” at fighting crime and keeping communities safe.²⁵⁴ Perjury is a key component of both.

Perjury most obviously functions to disclaim illegality. That much is the concern of the *Mapp*-centered account of testilying. Nearly all the lies, historical and contemporary, are a story—told to judges, prosecutors, and juries—that some investigative work, interrogation, or other activity comported with the rule of law, Fourth Amendment or otherwise. Unsurprisingly, the perjury becomes part and parcel of police culture: For example, the Department of Justice’s investigation into the Baltimore Police Department found that a supervisor emailed officers a fill-in-the-blank template for arrest paperwork that turned blatantly unconstitutional trespassing arrests into ones furnished by probable cause.²⁵⁵ But disputes over whether police act lawfully unfold outside of courts and police departments, too. While this Note has focused on police lies made while under oath or subject to professional and legal sanctions, officers also lie repeatedly in the court of public opinion.

For example, lies to the press preceded lies in departmental paperwork after Officer Van Dyke of the Chicago Police Department shot Laquan McDonald sixteen times and killed him. As reporters converged on the scene, a spokesman for the Fraternal Order of Police, the officers’ union, described McDonald’s threatening behavior and the need for force—an account that was flatly contradicted by video evidence from the incident.²⁵⁶ An official Chicago Police Department statement advanced similar lies.²⁵⁷ It was only when a court ordered the Department to release video footage that the false narrative was disproven in mainstream reporting. McDonald’s death offers only one example.²⁵⁸ Police officers carefully spin a narrative to the press about how lawfully they behave. Any-

²⁵³ Meares, *supra* note 150, at 554.

²⁵⁴ *Id.*

²⁵⁵ U.S. DEP’T OF JUST. CIVIL RIGHTS DIV., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 37–38 (Aug. 10, 2016), <https://www.justice.gov/crt/file/883296/download>. In the template, the supervisor left blank spaces for line officers to fill in identifying details of a suspect—except the template was pre-loaded to say the officers “observed a Black male[.]” perhaps giving away how the department envisioned enforcing trespassing statutes. *Id.*

²⁵⁶ See Ben Austen, *Chicago After Laquan McDonald*, N.Y. TIMES MAG. (Apr. 20, 2016), <https://www.nytimes.com/2016/04/24/magazine/chicago-after-laquan-mcdonald.html>.

²⁵⁷ *Id.*

²⁵⁸ See also *infra* notes 277–82 and accompanying text.

thing that threatens their public image becomes an existential crisis for police and their monopoly on social control.²⁵⁹

Beyond portraying to the public and to the legal system that policing is lawful, perjury also allows officers to proclaim that police are ferreting out crime and keeping communities safe, and that the world would be dangerous without their protection.²⁶⁰ Perjury furthers the central ideology of policing,²⁶¹ and becomes a tool police use to justify continued investments in surveillance and policing apparatuses while states and municipalities struggle to fund social, health, and educational programs.²⁶² Nearly every major police department publicizes statistics about their accomplishments.²⁶³ Several official NYPD Twitter accounts comprise a stream of tweets boasting about purportedly illegal firearms officers recovered or how officers keep the city safe.²⁶⁴ In court, lies about how these guns or other evidence were recovered communicate to judges and juries that policing is

²⁵⁹ Schrader, *supra* note 249. For example, in New York, a coalition of police unions is bitterly fighting, but so far losing, to avoid the release of hundreds of thousands of disciplinary records to the public—records that detail perjury complaints, among other abuses. See Benjamin Weiser, *Police Unions Lose Bid to Keep Disciplinary Records a Secret*, N.Y. TIMES (Feb. 16, 2021), <https://www.nytimes.com/2021/02/16/nyregion/nypd-discipline-records-ruling.html>. Similarly, more than half of Buffalo, New York's riot control team quit after two officers were disciplined for violently shoving an elderly man near a protest and then lying about it. See *infra* notes 277–82 and accompanying text. Elsewhere, the media has depicted a crisis among police departments as officers have quit in response to criticism following the George Floyd protests. Neil MacFarquhar, *Why Police Have Been Quitting in Droves in the Last Year*, N.Y. TIMES (June 24, 2021), <https://www.nytimes.com/2021/06/24/us/police-resignations-protests-asheville.html>. The true scale of these resignations is disputed, with some officers rejoining the same departments in different capacities or moving to other departments. Melissa Gira Grant, *The Damning Truth Behind Cop "Walkout" Stories*, NEW REPUBLIC (June 30, 2021), <https://newrepublic.com/article/162875/damning-truth-behind-cop-walkout-stories>. Rather than departments under siege, the narrative reinforces the notion that policing comes at a steep price: "If you want police protection, you are expected to protect the police from protest." *Id.*

²⁶⁰ Schrader, *supra* note 249.

²⁶¹ See Meares, *supra* note 150, at 554; see also *supra* notes 103–10 and accompanying text.

²⁶² Akbar, *supra* note 47, at 1820.

²⁶³ E.g., *DC Crime Cards*, METRO. POLICE DEP'T, <https://dcatlas.dcgis.dc.gov/crimecards> (last visited Aug. 28, 2021).

²⁶⁴ E.g., @NYPDSpecialOps, TWITTER (Mar. 7, 2021, 1:19 PM), <https://twitter.com/NYPDSpecialOps/status/1368627401924689932> (describing execution of a search warrant and firearms discovered in closet by #GoodBoy canine Rico); @NYPDnews, TWITTER (Mar. 5, 2021, 6:50 PM), <https://twitter.com/NYPDnews/status/1367985892665724930> (describing arrests of anti-police protestors, including for "assaults on police officers"). For a discussion of the role of perjury in cases involving guns and allegations of charges like assault of a police officer or resisting arrest, see *supra* notes 233–48 and accompanying text.

working as police claim it should.²⁶⁵ Lies disclaiming violence or racialized and classed enforcement communicate that policing is effective and at little cost. Whether in courtrooms or public statements, the police enjoy a tremendous windfall from lying: Lies mollify much of the dominant class,²⁶⁶ many whose daily lives remain untouched by police presence (let alone violence), so that police misconduct, profiling, and brutality are kept out of the mainstream until another killing, like George Floyd's, makes it difficult to ignore.

Perjury therefore plays an indispensable role, along with lies to the press and public, in how police craft their image, one that portrays officers as the exclusive, lawful, and effective provider of public safety. All the while, real people—predominantly Black, brown, and poor ones—are victimized by testifying. When articulating harms caused by police perjury, some scholars lament diminished “trust in government” or weakened “effectiveness” of law enforcement due to reduced credibility.²⁶⁷ This devalues the indignity and physical and emotional harm to people who become ensnared in the criminal legal system as the result of police lies. Even in a case with airtight proof of guilt, and even when an officer lies to circumvent perceived procedural hurdles like the exclusionary rule, his perjury has an expressive function. It tells the person whose liberty is on the line, and whose life may be forever changed by the carceral system and its consequences,²⁶⁸ that the law's promise of justice and its guarantee of equal treatment do not protect her.²⁶⁹

B. *Implications of a Structural Account of Perjury*

By this point in the Note, a patient but perceptive reader might ask, “So what?” Scholars have offered a range of solutions to fix police perjury. Even if the historical record enriches our understanding of testifying and a structural lens more adequately accounts for the problem, why not just pick from their proposals? This Section explains why that approach is impossible as a descriptive matter and unappealing as a normative one.

²⁶⁵ For a critical account of how police testimony is framed for jurors in a way that obscures perjury, see Johnson, *supra* note 128.

²⁶⁶ John Duda, *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*, NEXT SYS. PROJECT (Nov. 9, 2017), <https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba> (“The other thing about prisons and police is how they make people—the vast majority of people—feel secure. I don’t mean safe, I mean secure. Secure means that the scary, awful, monster people are kept at bay by those institutions.”).

²⁶⁷ Slobogin, *supra* note 38, at 1039.

²⁶⁸ See *supra* note 60 and accompanying text.

²⁶⁹ Cf. Bell, *supra* note 251 (describing legal estrangement theory).

The existing literature disaggregates perjury into different types—substantive as opposed to procedural, perjury to convict the innocent versus perjury to convict the guilty. In doing so, and by focusing almost exclusively on the procedural type, scholars approach the problem as a primarily legal one in need of a legal solution. By tinkering with Fourth Amendment doctrine²⁷⁰ or retooling the incentives that encourage police to lie through some additional oversight,²⁷¹ the problem will disappear, so they argue.

But if perjury is a structural problem—a feature of policing as it has existed in the United States for nearly two centuries, coextensive with racialized and classed violence—the practice demands a structural solution. We can discard the notion that perjury constitutes a “bad apples” problem, something only certain officers do in discrete cases. Instead, lying has become “part of a systemic pattern of official violence.”²⁷² We must be more imaginative in identifying the path forward and more critical of “reformist reforms.”²⁷³ The police have

²⁷⁰ Professor Slobogin proposes altering the level of cause required under the Fourth Amendment to stop suspects. Slobogin, *supra* note 38, at 1057. Professor Cloud would narrow and rigorously enforce exceptions to the Fourth Amendment’s warrant requirement. *Dirty Little Secret*, *supra* note 138, at 1346. Elsewhere, Professor Slobogin advocates for eliminating the exclusionary rule. Christopher Slobogin, *supra* note 149. Professor Wilson argues that the exclusionary rule should be strengthened to fully deter wrongdoing. Melanie D. Wilson, *An Exclusionary Rule for Police Lies*, 47 AM. CRIM. L. REV. 1 (2010).

²⁷¹ Professor Zeidman wants prosecutors to refuse charging when they believe police lied. Zeidman, *supra* note 129. Professor Capers would have prosecutors pursue criminal charges against cops who lie. Capers, *supra* note 138, at 874–75. Professor Dorfman advances a litigation approach, with greater discovery relating to past misconduct and a fuller opportunity to cross officers. Dorfman, *supra* note 128, at 463–64. Professor Dripps would subject officers to polygraph tests. Dripps, *supra* note 129. Professor Chin and Scott Wells would allow expert testimony on the “code of silence.” Chin & Wells, *supra* note 128.

²⁷² Roberts, *supra* note 61, at 278. The “bad apples” retort is often posed in response to police violence, but scholars have rejected that argument. *See, e.g.*, FRIEDMAN, *supra* note 71, at 11 (“One wishes [police violence] could be attributed solely to bad apples, but incidents like these are all too common.”); Cynthia Lee, *Reforming the Law on Police Use of Deadly Force: De-Escalation, Preseizure Conduct, and Imperfect Self-Defense*, 2018 U. ILL. L. REV. 629, 636 (“This is not a matter of just a few ‘bad apples’ misbehaving . . .”). A related argument is advanced in response to the progressive prosecution movement, which seeks to address the role of prosecutors in mass incarceration by electing reforming liberal prosecutors in the place of “bad apples.” *See generally* Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748 (2018) (describing the risks associated with depending on prosecutors as catalysts for criminal justice reform, including the inability of progressive prosecutors to initiate transformative change).

²⁷³ “Reformist reforms” aim to solve policing’s problems but ultimately legitimize and further entrench policing. Akbar, *supra* note 47, at 1802–14 (critiquing several recurring reformist reforms: more democracy, bureaucracy, procedural justice, and tools and technology); *cf.* Note, *supra* note 272, at 750–56 (describing prosecutorial efforts to “reform through discretion,” including nonenforcement, diverted enforcement, and calls for police accountability).

resisted every recent reform effort to date,²⁷⁴ leading some reformists to embrace abolition, including a member of President Obama’s Task Force on 21st Century Policing.²⁷⁵

Officers themselves have demonstrated their abject refusal to listen to new rules, and the consequence, as Professor Sekhon describes, is that they cannot be “contained by [law].”²⁷⁶ For example, two Buffalo Police Department officers in June 2020 responded to peaceful protests against police brutality by slamming a seventy-five-year-old man to the ground as he walked alone in an empty plaza nearby.²⁷⁷ Dozens of the officers’ colleagues calmly walked by as “blood poured out of [the man’s] ear.”²⁷⁸ To the press and public, police claimed the man “was injured when he tripped and fell.”²⁷⁹ Once video of the incident went viral, disproving the lie, the city suspended both officers.²⁸⁰ In response, fifty-seven officers quit—the

²⁷⁴ The long line of police commissions, dating back to the Lexow Committee in New York City, has failed to bring about reform. Kaba, *supra* note 55 (“These commissions didn’t stop the violence; they just served as a kind of counterinsurgent function each time police violence led to protests. . . . The philosophy undergirding these reforms is that more rules will mean less violence. But police officers break rules all the time.”). So too have the slate of Department of Justice investigations, reform agreements, and binding consent decrees. See ALEX S. VITALE, *THE END OF POLICING 20–22* (2017) (noting that federal investigations and prosecutions are “rare,” that local police are “often reluctant to cooperate” or refuse to comply, and that “[e]ven when cases end in voluntary agreements or court-imposed consent decrees, the results are rarely significant or long-lasting”); Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1461 (2016) (arguing that “federal investigations work, some of the time, to reduce police violence and to improve community perceptions about the police[,]” but that they often have only short-term benefits and do not “do the work of transformation”). *But see* Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3216–17, 3240 (2014) (noting several studies finding positive results following consent decrees but still identifying “numerous possible problems” with DOJ enforcement).

²⁷⁵ Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOS. REV. (Aug. 1, 2017), <https://bostonreview.net/law-justice/tracey-l-meares-policing-public-good-gone-bad>.

²⁷⁶ Sekhon, *supra* note 71, at 1711.

²⁷⁷ David Leonhardt, *When the Police Lie*, N.Y. TIMES (June 8, 2020), <https://www.nytimes.com/2020/06/08/briefing/minneapolis-coronavirus-new-york-your-monday-briefing.html>.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ Kimberly Kindy, Shayna Jacobs & David A. Fahrenthold, *In Protests Against Police Brutality, Videos Capture More Alleged Police Brutality*, WASH. POST (June 5, 2020, 8:46 PM), https://www.washingtonpost.com/national/protests-police-brutality-video/2020/06/05/a9e66568-a768-11ea-b473-04905b1af82b_story.html. This account in Buffalo tracks others from protests following the police murder of George Floyd. *E.g.*, Eoin Higgins, *New Videos Show Massachusetts Cops Brutalizing George Floyd Protesters*, APPEAL (Feb. 9, 2021), <https://theappeal.org/videos-show-massachusetts-cops-brutalizing-george-floyd-protesters> (documenting unprovoked brutality against protesters despite police press releases claiming protestors acted “disorderly” or “violent and chaotic”).

city's entire riot control team.²⁸¹ The police union responded: "These guys did nothing [wrong] . . . This is disgusting."²⁸² What faith can the public have that police would react to reforms aimed at perjury any differently than they have responded to protests against, and reforms aimed at, violence?

To solve the problem of police perjury, policing should be abolished. No amount of money or reform will fix the underlying problem: that lying is endemic to policing. Indeed, the tradition of dishonesty dating back to the origins of modern policing compel that conclusion. So, too, does the unique way that perjury often overlaps with law enforcement's control over and violence against Black, brown, and poor communities. Although the project of police and PIC abolition looks to dismantle policing as it currently exists, scholars and activists recognize the need to create and structure a world in which the conditions that create the need for policing are obsolete.²⁸³ As Professor Vincent Southerland notes, "a sudden disintegration of America's criminal legal system is not possible."²⁸⁴ Until then, an abolitionist approach to perjury should embrace measures that "decrease the power, footprint, and legitimacy of police."²⁸⁵ While detailed policy prescriptions are outside the scope of this Note, the following principles serve as helpful guideposts.

First, reformers should resist measures that invest more money in policing or further legitimize police in the eyes of the public or the law. Ultimately, such reforms entrench police power and frustrate the long-term project of dismantling the policing function. Proposals to conduct polygraph tests before officers testify, demands to equip officers with body-worn cameras, and calls for additional officer training siphon scarce resources that could be used to "build[] alternative modes of responding to collective needs and interpersonal harms" and instead invest in an institution that has proven incapable of fundamental change.²⁸⁶ Policymakers should be diverting resources away from the police.²⁸⁷

²⁸¹ Kindy et al., *supra* note 280.

²⁸² *Id.*

²⁸³ Mariame Kaba has said that "[f]or me prison abolition is two things: It's the complete and utter dismantling of prison and policing and surveillance as they currently exist within our culture. And it's also the building up of new ways of intersecting and new ways of relating with each other." Meares, *supra* note 275.

²⁸⁴ Vincent M. Southerland, *The Intersection of Race and Algorithmic Tools in the Criminal Legal System*, 80 MD. L. REV. 487, 564 (2021).

²⁸⁵ Akbar, *supra* note 47, at 1825.

²⁸⁶ *Id.*

²⁸⁷ For example, Austin, Texas recently reallocated funds from the police and purchased a hotel to provide sixty units of "permanent supportive housing for people experiencing chronic homelessness." Meg O'Connor, *Austin Will Use Money Cut from Police Budget to*

And second, creating lasting change by prompting judges and prosecutors to resolve the perjury problem is a fool's errand. For one, judges and prosecutors have proven woefully inadequate at curbing police perjury for nearly two centuries. The perjury scholarship itself identifies institutional pressures that make prosecutors and judges ill-suited to identify and condemn perjury—like the symbiotic police-prosecutor relationship necessary for prosecutors to bring charges,²⁸⁸ or the disinclination among judges to call police liars.²⁸⁹ Judicial deference to an officer's version of the facts is part of a longstanding and pervasive practice.²⁹⁰ And while the promise of “progressive prosecution” has captivated reformists, the prospect of wholesale change in the profession, leading to serious decreases in perjury, is unlikely.²⁹¹ San Francisco District Attorney and “progressive prosecutor” Chesa Boudin won acclaim last year when he announced a “do not call” list; the prosecutor's office will “no longer file charges in cases that rely solely on testimony from [officers]” with a history of misconduct, including dishonesty.²⁹² Despite the fanfare, deep skepticism is warranted: Scholars and public defenders quickly noted that the policy allows “clean” officers to put their names on arrest paperwork and conceal a “dirty” officer's involvement,²⁹³ part of the routine “code of silence.”²⁹⁴

Instead, abolition demands that we simultaneously work to defund and dismantle policing, create systems of accountability for police who lie, and repair the historical and ongoing harm that police lies create—and that we do so without legitimizing or investing in policing. As for accountability, there should be community-controlled entities that are vested with authority to investigate perjury claims, fire officers found to have lied, study which police practices produce perjury, and impose binding policies and priorities on police depart-

Establish Supportive Housing, APPEAL (Jan. 27, 2021), <https://theappeal.org/austin-cut-police-budget-supportive-housing-homelessness>.

²⁸⁸ Zeidman, *supra* note 129, at 429 & n.43.

²⁸⁹ *Dirty Little Secret*, *supra* note 138, at 1321–24.

²⁹⁰ See Lvovsky, *supra* note 229 (examining the practice, beginning in the mid-twentieth century, of courts embracing “expert” knowledge from police); Anna Lvovsky, *Rethinking Police Expertise*, 131 YALE L.J. (forthcoming) (discouraging deference to expert policing in order to provide for greater scrutiny of police behavior and protect individual rights); see also *supra* note 194 and accompanying text.

²⁹¹ See Note, *supra* note 272, at 756–68 (describing institutional disincentives and political hurdles that prevent progressive prosecution from leading to meaningful reform).

²⁹² Jay Barmann, *SF District Attorney to Stop Filing Charges in Cases that Rely on Testimony from Problematic Cops*, SFIST (June 16, 2020), <https://sfist.com/2020/06/16/sf-da-chesa-boudin-stop-filing-charges-cases-problematic-cops>.

²⁹³ Stern, *supra* note 119.

²⁹⁴ Chin & Wells, *supra* note 128.

ments.²⁹⁵ Officers should pay out of their own pockets for settlements and judgements stemming from perjury and other misconduct violations documented by community accountability bodies.²⁹⁶

A pair of new police reform laws in Colorado, which commentators hailed as “[g]roundbreaking,”²⁹⁷ illustrate the perils of “reformist reforms” and provide a helpful comparison to abolitionist approaches of withdrawing power from police departments. One of the laws, passed in 2019, empowers a state review board to revoke the certification of any officer found to have “made an untruthful statement concerning a material fact or knowingly omitted a material fact” in arrest paperwork, while testifying under oath, or during disciplinary proceedings.²⁹⁸

Since the law took effect, only six officers—none from Denver and only three officers total from Colorado’s ten largest municipalities—have lost their certification.²⁹⁹ Part of the problem stems from how the law was written: it relies on police departments to notify the state review board of any lies, based on internal administrative processes.³⁰⁰ But we know that police are loath to expose their colleagues’ lies: the “code of silence,” which the Department of Justice concedes is widespread,³⁰¹ describes this type of perjury.³⁰² Just one reform cost Colorado taxpayers thousands of dollars for additional training and support,³⁰³ all the while legitimizing policing by creating the perception that still-certified officers are honest. Demands for accountability should instead be met with community-based authority

²⁹⁵ Cf. Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 *YALE L.J.* 778, 813–14 (2021) (describing local activists’ calls for binding community control of the police as a means to shift power to those marginalized by the police).

²⁹⁶ See *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE, https://static1.squarespace.com/static/59ead8f9692ebec25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf (last visited Dec. 14, 2021).

²⁹⁷ Russell Berman, *The State Where Protests Have Already Forced Major Police Reform*, ATLANTIC (July 17, 2020), <https://www.theatlantic.com/politics/archive/2020/07/police-reform-law-colorado/614269>.

²⁹⁸ 2019 Colo. Sess. Laws 2422.

²⁹⁹ Elise Schmelzer, *For First Time, Lying Colorado Police Officers Lose Certification Under New Law*, DENVER POST (Dec. 11, 2020, 4:41 PM), <https://www.denverpost.com/2020/12/11/colorado-police-lying-decertification>.

³⁰⁰ 2019 Colo. Sess. Laws 2422.

³⁰¹ U.S. DEP’T OF JUST. C.R. DIV. & U.S. ATT’YS OFF. N.D. ILL., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (2017), <https://www.justice.gov/opa/file/925846/download>.

³⁰² Chin & Wells, *supra* note 128.

³⁰³ See 2019 Colo. Sess. Laws 2425 (appropriating \$40,056 to the department of law for training board support and peace officers standards).

to impose change on the police.³⁰⁴ And new community bodies should primarily comprise people from groups disproportionately targeted by police, and their views should be centered in the process.³⁰⁵

Empowering communities to hold police accountable for perjury is one forward-looking step to repair the harm that police lying creates. Jurisdictions also should find ways to offer reparations to communities harmed by police perjury. Abolition requires a reckoning with our past, along with affirmative steps to “repair histories of harm.”³⁰⁶ In 2015, advocates successfully demanded \$5.5 million in reparations from the City of Chicago for victims of programmatic torture inflicted on primarily poor Black and brown Chicagoans by a former Chicago Police Commander and his department between 1972 and 1991.³⁰⁷ Policymakers should identify victims of police perjury or their descendants, and make amends for the lasting harm police lies have caused to individuals and communities. If those efforts are infeasible, police perjury should be a distinct and quantifiable harm included in broader reparations initiatives.

Ultimately, abolitionist solutions to perjury may not target perjury at all. We can reduce the incidence of testifying by reducing the power and footprint of the police, which is a necessary step toward the long-term goal of abolition. Professor Barry Friedman, for example, has called for “disaggregating the policing function.”³⁰⁸ Police perjury emerges frequently in cases involving street-level encounters between people and the police. If jurisdictions prohibit police from responding in certain circumstances, it becomes impossible for them to lie. Instead of the police, communities can create and empower new community service providers to respond to harm, so long as those services do not replicate the control and violence perpetrated by police.³⁰⁹ Although disaggregating the police function is a short-term solution

³⁰⁴ See Simonson, *supra* note 295, at 813–14 (outlining push for community control of policing among local activists).

³⁰⁵ *Id.* at 815.

³⁰⁶ Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 HARV. L. REV. 1684, 1686 (2019).

³⁰⁷ See Chi., Ill., Reparations for Burge Torture Victims Ordinance (May 6, 2015) (providing reparations fund for Burge torture victims, who may individually receive up to \$100,000); Hal Dardick & John Byrne, *Council Panel Endorses \$5.5 Million Reparations Fund for Burge Victims*, CHI. TRIB. (May 5, 2015, 3:23 PM), <https://www.chicagotribune.com/business/ct-burge-reparations-hearing-met-20150505-story.html>.

³⁰⁸ Friedman, *supra* note 101, at 933, 954.

³⁰⁹ See, e.g., Akbar, *supra* note 47, at 1834–37 (describing community-based projects); see also Beth E. Richie & Kayla M. Martensen, *Resisting Carcerality, Embracing Abolition: Implications for Feminist Social Work Practice*, 35 J. WOMEN & SOC. WORK 12, 14 (2020) (arguing that without fundamental changes to social work practice, sending social workers into communities rather than police will recreate harm).

that tracks the abolitionist critique, it cannot replace the long-term vision: a world in which education, housing, and health care generate safe and healthy communities, and cooperation and mutual aid supplant violent modes of surveillance and control—a world in which there are no police to lie.³¹⁰

CONCLUSION

Scholars to consider police perjury frame the problem as one emerging largely after the Supreme Court made the exclusionary rule mandatory in state criminal proceedings. That narrative suggests that lies told after *Mapp* were a departure from a tradition of honesty. But the historical record tells a different story: Police officers lie, and they have for as long as police have existed in the United States. Several consequences flow from that simple truth. First, rather than a largely legal problem, perjury should be understood as endemic to modern policing. By viewing perjury as a structural problem, we better understand police lies and their connection to violence and to the raced, gendered, and classed social order that policing constructs. More than a tactic to evade scrutiny in the courtroom, the lies are necessary to sustain policing as it currently exists. Further, as a structural problem—one that has persisted for almost two centuries and proven immune to reform—police perjury demands a structural solution. Rather than fiddle with legal rules, those concerned with police perjury should embrace what organizers, activists, and abolition scholars have already concluded: Policing, perjury included, works exactly as intended. The institution is incompatible with truth and must be abolished. Spared of the resources and energy we dedicate to surveillance, control, and punishment, we can create a “different society, built on cooperation instead of individualism, on mutual aid instead of self-preservation.”³¹¹

³¹⁰ See Kaba, *supra* note 55 (describing how abolitionism is premised on the provision of basic needs and resources by the government).

³¹¹ *Id.*